

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2083B
P75

United States Court of Appeals**FOR THE SECOND CIRCUIT**

Docket No. 74-2083**MEDWIN BENJAMIN,***Petitioner-Appellant,*

—against—

COMMISSIONER OF INTERNAL REVENUE,*Appellee-Respondent.*

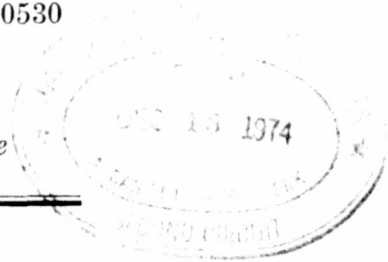
**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**APPENDIX TO BRIEF OF
PETITIONER-APPELLANT**

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Washington, D. C. 20530

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Chief Counsel
Internal Revenue Service



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INDEX OF DOCUMENTS FILED
IN TAX COURT

	<u>Page</u>
Index to Docket Entries	1a
General Docket Entries, Docket No. 6237-69	3a
General Docket Entries, Docket No. 5056-73	7a
Notice of Appeal	9a
Order Appealed From	10a
Petition, Docket No. 6237-69	11a
Exhibit "A" to Petition, Docket No. 6237-69	15a
Answer to Petition, Docket No. 6237-69	36a
Petition, Docket No. 5056-73	38a
Exhibit "A" to Petition, Docket No. 5056-73	42a
Answer to Petition, Docket No. 5056-73	46a
Transcript of Proceeding before the Tax Court, November 13, 1972	48a
Transcript of Proceeding before the Tax Court, November 20, 1972	62a
Minutes of Proceeding before the Tax Court, October 1-October 4, 1973	86a
Transcript of Proceeding before the Tax Court, October 1, 1973	87a
Order Consolidating Cases, October 1, 1973	107a
Motion to Dismiss for Lack of Prosecution, Docket No. 6237-69	108a
Exhibit "A" to Motion to Dismiss for Lack of Proxecution, Docket No. 6237-69	110a
Exhibit "B" to Motion to Dismiss for Lack of Prosecution, Docket No. 6237-69	115a

	<u>Page</u>
Motion to Dismiss for Lack of Prosecution, Docket No. 5056-73	120a
Exhibit "A" to Motion to Dismiss for Lack of Prosecution, Docket No. 5056-73	122a
Transcript of Proceeding before the Tax Court, October 4, 1973	125a
Order of Dismissal and Decision, Docket No. 6237-69	123a
Order of Dismissal and Decision, Docket No. 5056-73	129a
Motion by Petitioner for Leave to File Motion to Vacate Order of Dismissal	130a
Motion to Vacate Order of Dismissal and Decision, Docket No. 6237-69	133a
Exhibit "A" to Motion to Vacate Order of Dismissal and Decision, Docket No. 6237-69	135a
Exhibit "B" to Motion to Vacate Order of Dismissal and Decision, Docket No. 6237-69	136a
Motion to Vacate Order of Dismissal and Decision, Docket No. 5056-73	137a
Exhibit "A" to Motion to Vacate Order of Dismissal and Decision, Docket No. 5056-73	139a
Exhibit "B" to Motion to Vacate Order of Dismissal and Decision, Docket No. 5056-73	140a
Notice of Filing and Hearing of Motion Regarding Vacating Orders of Dismissal and Decision	141a
Order dated January 21, 1974	142a
Order dated March 19, 1974	143a
Minutes of Proceeding before Tax Court dated May 13, 1974	144a
Affidavit of Medwin Benjamin dated May 8, 1974 with Attachments	145a

iii.

	<u>Page</u>
Exhibit "A" to Affidavit of Medwin Benjamin dated May 8, 1974 with Attachments	147a
Exhibit "B" to Affidavit of Medwin Benjamin dated May 8, 1974 with Attachments	152a
Entry of Appearance by Harold Greenberg	173a
Transcript of Proceeding before Tax Court on May 13, 1974	174a

Index To Docket Entries

MEDWIN BENJAMIN,
Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Tax Court Docket Nos. 6237-69, 5055-73

Document No.

Docket entries #6237-69.....	1
Docket entries #5055-73.....	2
Petition #6237-69.....	3
Request for place of trial - Granted.....	4
Answer.....	5
Motion by Mr. Stanley A. Bailey for leave to withdraw as counsel for petitioner - Granted #6237-69.....	6
Notice setting case for trial 6/7/71 #6237-69.....	7
Amended notice of trial as to withdrawal of counsel of record #6237-69.....	8
Motion by respondent for pre-trial conference #6237-69.....	9
Order dated 5/26/71.....	10
Minutes of proceedings before the Tax Court 6/7/71 #6237-69.....	11
Transcript of proceedings before the Tax Court 6/7/71.....	12
Transcript of proceedings before the Tax Court 6/7/71.....	13
Order dated 6/7/71.....	14
Motion by petitioner to change place of trial - Granted #6237-69..	15
Notice setting case for trial 1/24/72 #6237-69.....	16
Minutes of proceedings before the Tax Court 1/24/72 #6237-69.....	17
Transcript of proceedings before the Tax Court 1/24/72.....	18
Order dated 1/24/72.....	19
Notice setting case for trial 11/13/72 #6237-69.....	20
Notice of change of address by petitioner #6237-69.....	21
Minutes of proceedings before the Tax Court 11/13, 20/72 #6237-69.	22
Transcript of proceedings before the Tax Court 11/13/72.....	23
Transcript of proceedings before the Tax Court 11/20/72.....	24
Order dated 11/20/72.....	25

Index to Docket Entries

Index - continued

Medwin Benjamin

vs.

Commissioner of Internal Revenue

Docket Nos. 6237-69, 5056-73

Page - 2

	Document No.
Notice setting case for trial 10/1/73 #6237-69.....	26
Petition #5056-73.....	27
Request for place of trial - Granted.....	28
Answer.....	29
Minutes of proceedings before the Tax Court 10/1, 4/73.....	30
Transcript of proceedings before the Tax Court 10/1/73.....	31
Order dated 10/1/73.....	32
Motion by respondent to dismiss for lack of prosecution - Granted #6237-69.....	33
Motion by respondent to dismiss for lack of prosecution - Granted #5056-73.....	34
Transcript of proceedings before the Tax Court 10/4/73.....	35
Order of dismissal and decision #6237-69.....	36
Order of dismissal and decision #5056-73.....	37
Motion by petitioner for leave to file motion to vacate order of dismissal and decision - Granted.....	38
Motion by petitioner to vacate order of dismissal and decision #6237-69.....	39
Motion by petitioner to vacate order of dismissal and decision #5056-73.....	40
Notice of filing and hearing of motion #6237-69.....	41
Order dated 1/21/74 #6237-69.....	42
Order dated 3/19/74 #5056-73.....	43
Minutes of proceedings before the Tax Court 5/13/74.....	44
Affidavit with attachments #6237-69.....	45
Entry of appearance by Harold Greenberg #6237-69.....	46
Transcript of proceedings before the Tax Court 5/13/74.....	47
Order dated 5/13/74.....	48
Notice of appeal.....	49
Notice of filing notice of appeal.....	50
Notice of assembling and date for transmission of record.....	51

TAX COURT OF THE UNITED STATES

GENERAL DOCKET ONLY COPY AVAILABLE

DOCKET NO. 6237-69

~~3520 Delaware Avenue,~~
~~South-Marginal Road, Fort-Lee, New Jersey,~~
~~Central Park West, Suite 201, New York, New York 10023--~~

PETITIONER.
 Sylvan Ave., Englewood Cliffs, N. J.
 vs.

07632

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

APPEARANCES FOR PETITIONER:

NAME Stanley Arthur Bailey--(withdrawn 3/2/71)ADDRESS 411-Pan-American Bank Building--Miami, Florida--33131--Harold Greenberg, Madison Ave. (540) New York,
N.Y. (5/13/74) 10022

Date Month Day Year	Filings and Proceedings	Action	Served
17, 1969	PETITION FILED: FEE PAID		Dec 29, 1969
17, 1969	REQUEST by Petr. for Trial at Miami, Florida	GRANTED Dec 29, 1969	Dec 29, 1969
6, 1970	ANSWER filed by respondent.		FEB 10 1970
25, 1971	MOTION by Stanley Arthur Bailey for leave to withdraw as counsel of record.	GRANTED Mar. 1, 1971	Mar. 19, 1971
18, 1971	NOTICE OF TRIAL at Miami, Fla. on June 7, 1971		Mar. 18, 1971
19, 1971	AMENDED NOTICE OF TRIAL as to withdrawal of counsel		Mar. 19, 1971
24, 1971	MOTION by Resp. for a pre-trial conference at Miami, Fla., on June 7, 1971.	(See Order)	
6, 1971	ORDER, that resp's motion is granted and a pre-trial conference will be held at a time fixed at the call of the calendar on June 7, 1971, at Miami, Fla.		June 1, 1971
7, 1971	HEARING at Miami, Fla. before Judge Atkins. Petr's oral motion for continuance-Granted-Cont'd.Gen.		
7, 1971	ORDER, that petr's oral motion for continuance is granted and this case is continued generally.		June 28, 1971
23, 1971	MOTION by Petr. to change place of trial from Miami, Fla. to New York, N.Y., and set for trial as soon as possible. (No Obj. Resp.)	GRANTED June 30, 1971	June 30, 1971
28, 1971	TRANSCRIPT of Hearing June 7, 1971 received (Vol-2)		

6237-69

General Docket Entries, Docket No. 6237-69

DOCKET NO.

(Continuation)

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EDWIN WILLIAMS		PETITIONER	PAGE 2
Date	Filings and Proceedings	Action	Served
Month Day Year			
Oct. 27, 1971	NOTICE OF TRIAL at N.Y., NY on Jan. 24, 1972		Oct. 27, 1971
Jan. 24, 1972	HEARING at New York, N.Y. before Judge Quealy.		
	Case continued on the Court's own Motion. See Order.		
Jan. 24, 1972	ORDER, that case is hereby Continued Generally		Feb. 11, 1972
Mar. 14, 1972	TRANSCRIPT of Jan. 24, 1972 rec'd.		
Aug. 28, 1972	NOTICE OF TRIAL on Nov. 13, 1972 at New York, N.Y.		Aug. 28, 1972
Sept. 15, 1972	CHANGE OF ADDRESS by Petitioner filed.		Sept. 22, 1972
Nov. 13, 20, 1972	HEARING at New York, N.Y. before Judge Raum.		
	Nov. 13, :Report on status of case and Stipulation of		
	Facts: Filed.		
	Nov. 20: Oral motion for Continuance: Granted. See Order.		
Nov. 20, 1972	ORDER, that petitioner's oral motion for continuance		Dec. 15, 1972
	is granted and case continued generally.		
Dec. 14, 1972	TRANSCRIPT of Nov. 13, & 20, 1972 received. (2).		
Jun 25, 1973	NOTICE OF TRIAL on Oct. 1, 1973 at New York, N.Y.		Jun 25, 1973
Oct. 1 & 4, 1973.	HEARING at New York, N. Y. before Judge Forrester.		
	Petr. oral motion to consolidate: See Order.		
	Resp. motion to dismiss for lack of prosecution		
	filed Oct. 4, 1973: See Order dated Oct. 17, 1973.		
Oct. 17, 1973	ORDER OF DISMISSAL, that resp. motion filed Oct. 4, 1973 is granted; and further	See order May 13, 1974	Oct. 17, 1973
	DECISION ENTERED, Judge Forrester.		
Oct. 1, 1973	ORDER, that petr. oral motion for consolidation is		OCT 17 1973
	granted in that 6237-69 and 5056-73 are consolidated		
	for trial, briefing and opinion; and further		
	ORDER, that said cases are set for trial on Oct. 4, 1973 at New York, New York.		
Oct. 23, 1973	TRANSCRIPT of Oct. 1, & 4, 1973 rec'd. (1) vol. each.		

UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 6237-69

(Continuation)

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MEDWIN BENJAMIN		PETITIONER	PAGE 3
Date Month Day Year	Filings and Proceedings	Action	Served
Dec. 26, 1973	MOTION by Petr. for leave to file Motion to Vacate Order of Dismissal and Decision. (Motion to Vacate order of Dismissal and Decision Lodged)	GRANTED Dec. 27, 1973	Jan. 3, 1974
Dec. 27, 1973	MOTION to Vacate Order of Dismissal and Decision filed by Petitioner.		
Jan. 8, 1974	NOTICE of Hearing on February 20, 1974 at Washington, D.C., on Petr. motion to vacate order of dismissal.		JAN 8 1974
Jan. 21, 1974	ORDER, that petr's motion to vacate the decision is stricken from Feb. 20, 1974 at Wash. D.C. and further		JAN 22 1974
	ORDER, that the motion is calendared for hearing on May 13, 1974 at New York, N.Y.		
May 13, 1974	HEARING at New York, N.Y. before Judge Forrester. Affidavit of Medwin Benjamin (with att. transcript) - filed. E/A for Petr. by Harold Greenberg - filed. Petrs. Motion entered Oct. 17, 1973, to Vacate Orders of Dismissal & Decisions - Denied. See order.		JUN 5 1974 JUN 5 1974
May 13, 1974	ORDER, that petitioners' motion to vacate orders of dismissal & decisions entered Oct. 17, 1973, is denied.		JUN 5 1974
June 11, 1974	TRANSCRIPT of May 13, 1974 rec'd.		
	APPELLATE PROCEEDINGS		
July 25, 1974	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petr.		July 26, 1974
July 26, 1974	NOTICE of Filing with copy of notice of appeal sent to Mr. Meade Whitaker, Chief Counsel.		July 26, 1974

(continued on page 4)

(Continuation)

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7a
UNITED STATES TAX COURT

GENERAL DOCKET ONLY COPY AVAILABLE

5056-73

DOCKET NO. _____

EDWIN BENJAMIN
0 Sylvan Ave., Englewood Cliffs, N. J. 07632
~~520-244-1111~~
~~Ext. 100-N.J.-07024~~

PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE.

RESPONDENT.

APPEARANCES FOR PETITIONER:

(5/13/74)

Harold Greenberg, Madison Ave., New York, N.Y. 100

NAME _____

ADDRESS _____

Date Month Day Year	Filings and Proceedings	Action	Served
July 2, 1973	PETITION FILED: FEE PAID July 2, 1973		July 5, 1973
Aug. 29, 1973	REQUEST by Resp. for Trial at New York, N.Y.	GRANTED Aug. 29, 1973	Aug. 29, 1973
Aug. 29, 1973	ANSWER by Resp. filed.		Aug. 29, 1973
Oct. 1 & 4, 1973.	HEARING at New York, N. Y. before Judge Forrester. Petr. oral motion to consolidate: See Order. Resp. motion to dismiss for lack of prosecution filed Oct. 4, 1973: See Order dated Oct. 17, 1973.		
Oct. 1, 1973	ORDER, that petr. oral motion for consolidation is granted in that 6237-69 and 5056-73 are consolidated for trial, briefing and opinion; and further ORDER, that said cases are set for trial on Oct. 4, 1973 at New York, New York. (Dkt. 5056-73 added to calendar by this Order).		Oct. 17, 1973
Oct. 17, 1973	ORDER OF DISMISSAL, that resp. motion filed Oct. 4, 1973 is granted; and further DECISION ENTERED, Judge Forrester.	See order May 13, 1974	
Oct. 23, 1973	TRANSCRIPT of Oct. 1, & 4, 1973 rec'd. (1) vol. each.		
Dec. 26, 1973	MOTION by Petr. for leave to file Motion to Vacate Order of Dismissal and Decision. (Motion to Vacate Order of Dismissal and Decision Lodged)	SEE ORDER Dtd. 3/12/74 GRANTED Dec. 27, 1973	Jan. 3, 1974

(Continuation)

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Notice of Appeal

UNITED STATES TAX COURT
Washington, D.C.

-----x
MEDWIN BENJAMIN, et alDocket No. 6237-69
5056-73

Petitioner

vs.

NOTICE OF APPEAL

COMMISSIONER OF INTERNAL REVENUE

Respondent
-----x

Notice is hereby given that MEDWIN BENJAMIN, the
Petitioner above named, hereby appeals to the United States Court
of Appeals for the Second Circuit from the order of the U.S. Tax
Court signed by the Honorable Bruce M. Forrester, entered in the
above captioned proceeding on the 13th day of May, 1974, which
order denied the Petitioner's motion to vacate the orders of dis-
missal and decisions entered on October 17, 1973, and from each
and every part of said order.

Dated: New York, New York
July 18, 1974.

GLASS GREENBERG & IRWIN

By 

Harold Greenberg, a Member
of the Firm
Attorneys for Petitioner
540 Madison Avenue
New York, New York 10022

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10a
Order Appealed From

UNITED STATES TAX COURT
WASHINGTON

MEDWIN BENJAMIN, et al

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 6237-69
5056-73

O R D E R

These cases were called at New York, New York, on May 13, 1974, pursuant to the Court's orders dated January 21, 1974, and March 19, 1974, setting these cases for hearing on petitioners' motion to vacate order of dismissal and decision entered by the Court on October 17, 1973. Petitioners appeared through counsel who entered his appearance at New York, New York, on May 13, 1974. Counsel for the parties were heard. After due and careful consideration of the Court's record in these cases, it is

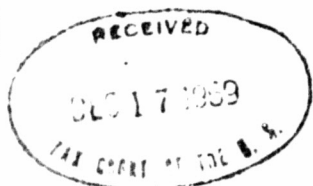
ORDERED, that petitioners' motion to vacate orders of dismissal and decisions entered October 17, 1973, at the above-named docket numbers is hereby denied.

(Signed) Bruce M. Forrester

Judge

Dated: New York, New York,
May 13, 1974,

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TAX COURT OF THE UNITED STATES

MEDWIN BENJAMIN,)

Petitioner,)

v.)

DOCKET NO. _____

COMMISSIONER OF INTERNAL)
REVENUE,)

Respondent,)

PETITION

The above named Petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his two notices of deficiencies, one dated September 22, 1969 (Form 1-22 436) and the second dated September 26, 1969 (Form 4089, Service Symbols Ap:Mia:MM:REM) and as a basis for his petition alleges as follows:

1. Petitioner is an individual residing at 80 Central Park West, New York, New York. The returns for the periods here involved were filed with the District Director for the District of Florida.

2. The notices of deficiencies were mailed to Petitioner on September 22, 1969 and September 26, 1969. Copies of these notices are attached and marked Exhibit A.

3. The deficiencies as determined by the Commissioner are income taxes for the calendar years 1965 through 1968 inclusive in the amount of \$237,007.10 plus penalties of \$45,925.20 of which approximately \$282,932.30 is in dispute.

4. The determination of tax set forth in the aforesaid notices of deficiencies are based upon the following errors:

a. As to the year ended December 31, 1965, the Commissioner erred in disallowing the deduction of \$2,000,000.00

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Petition, Docket No. 6237-69

claimed in Petitioner's 1965 income tax return as a loss of business property arising from the confiscation of Petitioner's business property by the General Service Administration. The Commissioner's determination that said \$2,000,000.00 loss was not established and that the loss was not sustained in the year 1965 as its basis in disallowing the loss is in error. This disallowance, which Petitioner claims was in error, led to the deficiencies in the years 1966, 1967 and 1968 as Petitioner's claimed net operating loss arising from the \$2,000,000.00 loss of business property was disallowed in each of those three years.

b. In all four taxable years Petitioner was assessed a deficiency penalty under IRC 6651(a) and a negligence penalty under IRC 6653(a) which penalties are in error.

5. The facts upon which the Petitioner relies as the basis of his case are as follows:

a. In 1951 and for several years prior thereto Petitioner operated a business under the tradename "Benjamin's for Motors." This business involved the purchase, restoration and resale of new and used machines. The machines were primarily purchased from the War Assets Administration.

b. On January 9, 1951, suit was filed against Petitioner by the United States of America in the U.S. District Court for the Eastern District of New York known as case No. 11391. That suit sought a money judgment against Defendant (Petitioner herein) of \$934,498.00 plus interest for merchandise allegedly sold and delivered by the War Assets Administration to Petitioner. On February 21, 1951, a judgment was entered in that case in favor of the United States of America against Petitioner in the sum of \$1,137,787. Supplemental proceedings commenced on the judgment and on February 7, 1952, the Court appointed receiver conducted a public sale at which all of Petitioner's inventory and business properties were sold. The receiver received gross proceeds from the sale of \$752,651 and, after deductions of receiver's and attorneys fees, etc., \$582,674 was paid to the government. The balance remains unpaid to date.

c. On October 28, 1952, a few months after the receiver's sale of Petitioner's assets in the District Court case, Petitioner filed suit against the United States of America in the Court of Claims, which suit was assigned No. 538-52. Petitioner's main cause of action in that suit was a claim against the United States of America for breach of an agreement to withhold execution on the judgment obtained in the District Court suit pending study and evaluation of Petitioner's setoffs against the government

for defective merchandise, breach of warranty of fitness and merchantability, and in the Court of Claims case Petitioner, in good faith and on advice of counsel, actively litigated his claim that the government violated its agreement with him by depriving his business property and business assets when it refused to liquidate his assets until Petitioner's counterclaims and set-offs were computed and credited against Petitioner's obligation to the government. Petitioner sought damages of several million dollars against the government on the grounds that his business assets had a basis and value of several million dollars more than the amount realized by the government at the receiver's sale.

d. The Court of Claims case was vigorously and actively litigated for thirteen (13) years. A decision was finally rendered by the Court of Claims on July 16, 1965, in a sixty-nine (69) page opinion. Although the Court of Claims found for Petitioner on some of his causes of action, it decided against him in his cause of action based upon the government's liquidation of his business assets.

e. Petitioner's Court of Claims suit against the government was filed on advice of counsel, in good faith and was an attempt by Petitioner to exhaust his remedies to recoup the losses that he believed the government caused him. Petitioner litigated aggressively and at all times reasonably believed that there was a reasonable prospect of recovery and that he would prevail in the Court of Claims action. Since the possibility of recouping his loss did not terminate until the adverse Court of Claims decision on July 16, 1965, Petitioner's loss for tax purposes occurred in 1965 which was when Petitioner claimed it in his tax return for the first time.

f. The original books and records of Petitioner's business are available and substantiate the amount of the loss claimed by Petitioner in his 1965 income tax return and carried over in the years 1966, 1967 and 1968.


g. Since Petitioner had a good faith belief in the propriety of his business loss deduction, took the loss upon advice of professional advisers and did not take this deduction negligently or with intentional disregard of any rules or regulations, the 5% negligence penalty assessed under IRC 6653(a) is unwarranted and contrary to law.

h. Petitioner travels a considerable amount in his business and consequently his returns for the years in question were filed late. Extensions for some of the years were obtained. This excessive travel made it difficult for Petitioner to secure the necessary information to file his returns on time. The late filing of the returns was accordingly

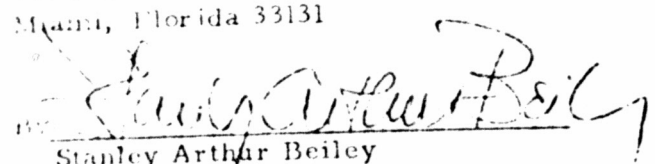
Petition, Docket No. 6237-69

... reasonable cause and was not based on willful neglect and the
 ... mother's assessment of a delinquency penalty under IRC 6651(a)
 ... four years in question is unwarranted and contrary to law.

WHEREFORE, Petitioner prays that this Court may try this
 ... and determine that there are no deficiencies due from Petitioner for
 ... years 1965 through 1968 inclusive and for such other and further relief
 ... the Court may deem fit and proper in the circumstances.


 MEDWIN BENJAMIN, Petitioner


PAUL, LANDY, BEILEY & BARTEL
 Attorneys for Petitioner
 541 Pan American Bank Building
 Miami, Florida 33131


 Stanley Arthur Beiley

STATE OF NEW YORK)
 : SS.
 COUNTY OF NEW YORK)

Before me, the undersigned authority, this day personally
 appeared MEDWIN BENJAMIN, who, after being duly sworn under oath,
 deposes and says that he is the Petitioner above-named, that he has read the
 foregoing Petition and is familiar with the statements contained therein and
 that the statements contained therein are true, except any stated to be upon
 information and belief, and these he believes to be true.

SWORN TO AND SUBSCRIBED before me this 12th day
 of DECEMBER 1969.


 NOTARY PUBLIC

My commission expires:

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Exhibit "A" to Petition, Docket No. 6237-69

Rm. 316, 51 S.W. 1st Ave., Miami, Florida 33130
 U.S. TREASURY DEPARTMENT
 REGIONAL COMMISSIONER
 Internal Revenue Service
 Southeast Region

SEP 26 1966

Ap:Mia:PM:REM

Mr. Madwin Benjamin
 5005 Collins Avenue
 Miami Beach, Florida 33140

Dear Mr. Benjamin:

Taxable Year Ended:	Deficiency: Tax	Additions to Tax 1954 Code	
		Section 6651(a)	Section 6653(a)
Dec. 31, 1965	\$3,134.38	\$313.43	\$156.72
Dec. 31, 1966	1,130.00	169.49	-

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability for the above-noted taxable years discloses deficiencies in the amounts shown above. Assessment of the deficiencies has been made under the provisions of the internal revenue laws applicable to jeopardy assessments. The attached statement shows the computation of the deficiencies.

If you decide to contest this determination, you must do so by filing a petition within 90 days (150 days if you are outside the States of the Union and the District of Columbia) from the date of this letter with the Tax Court of the United States in accordance with its rules. A copy of the rules of the Court may be obtained by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D. C. 20044.

Sincerely yours,

Randolph W. Thrower

Commissioner

By (Signed) A. V. Wootten

A. V. Wootten
 Assistant Chief
 Appellate Branch Office

Enclosure:
 Statement

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Exhibit "A" to Petition, Docket No. 6237-69

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

SYMBOLS

Ap: Mla: MM: RCM

STATUTORY NOTICE STATEMENT

Maduin Benjamin
5005 Collins Avenue
Miami Beach, Florida 33140

DO OF TAX

Income

DEFICIENCY

TAXABLE YEAR ENDED

Additions to Tax - 1954 Code

	Tax	Section 6651(a)	Section 6653(a)
Dec. 31, 1965	\$3,134.38	\$313.43	\$156.72
Dec. 31, 1966	1,130.00	169.49	-
Total	<u>\$4,264.38</u>	<u>\$482.92</u>	<u>\$156.72</u>

"Assessment of this deficiency has been made against you under the provisions of Internal revenue law applicable to jeopardy assessments."

In making this determination, careful consideration has been given to the preliminary letter dated August 21, 1968, to your protest dated September 9, 1968, to the District Conference Report dated November 13, 1968 and to the statements made at the conferences held on February 11 and May 20, 1969.

Since your income tax returns for the years 1965 and 1966 were not filed within the time prescribed by law, and you have not shown that such failure to timely file your returns was due to reasonable cause, 10 percent of the 1965 tax and 15 percent of the 1966 tax is added as provided by section 6651 of the 1954 Internal Revenue Code.

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Stanley Arthur Bailey, Esq.
Paul Landy and Bailey
341 Pan American Bank Bldg.
Miami, Florida 33131

James R. Kaufman, CPA
Kaufman & Rossin
Northeast Airlines Bldg.
150 S.E. 2nd Avenue
Miami, Florida 33131

☒ Copy to Authorized Representative

Exhibit "A" to Petition, Docket No. 6237-69

JHM 4089
JANUARY 1966

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

STATUTORY NOTICE STATEMENT

SYMBOLS

Ap:Mil:Mi: M

Medwin Benjamin
5005 Collins Avenue
Miami Beach, Florida 33140

KIND OF TAX

Income

TAXABLE YEAR ENDED

DEFICIENCY

Additions to Tax - 1954 Code

	<u>Tax</u>	<u>Section 6651(n)</u>	<u>Section 6653(n)</u>
Dec. 31, 1965	\$3,134.38	\$313.43	\$156.72
Dec. 31, 1966	<u>1,130.00</u>	<u>169.49</u>	<u>-</u>
Total	<u>\$4,264.38</u>	<u>\$482.92</u>	<u>\$156.72</u>

"Assessment of this deficiency has been made against you under the provisions of Internal revenue laws applicable to jeopardy assessments."

In making this determination, careful consideration has been given to the preliminary letter dated August 21, 1968, to your protest dated September 9, 1968, to the District Conference Report dated November 13, 1968 and to the statements made at the conferences held on February 11 and May 20, 1969.

Since your income tax returns for the years 1965 and 1966 were not filed within the time prescribed by law, and you have not shown that such failure to timely file your returns was due to reasonable cause, 10 percent of the 1965 tax and 15 percent of the 1966 tax is added as provided by section 6651 of the 1954 Internal Revenue Code.

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Stanley Arthur Bailey, Esq.
Paul, Landy and Bailey
341 Pan American Bank Bldg.
Miami, Florida 33131

James R. Kaufman, CPA
Kaufman & Rossin
Northeast Airlines Bldg.
150 S.E. 2nd Avenue
Miami, Florida 33131

☒ Copy to Authorized Representative

Exhibit "A" to Petition, Docket No. 6237-69

FORM 886-A REV. APRIL 1968 U.S. TREASURY	EXPLANATION OF ITEMS	YEAR/PERIOD ENDED
--	----------------------	-------------------

Edwin Benjamin

It is determined that part of the underpayment of tax for the year 1965 is due to negligence or intentional disregard of rules and regulations. Consequently, the 5 percent addition to the tax provided by section 6653(a) is asserted for that year.

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INDIVIDUAL INCOME TAX		STATEMENT SCHEDULE 1	
TAXABLE YEARS ENDED		12-31-65	12-31-66
TAXPAYER'S NAME: John Benjamin			
TAXABLE INCOME OR LOSS: XXXXXXXXXXXXXXX			
<input checked="" type="checkbox"/> RETURN AS FILED <input type="checkbox"/> PRELIMINARY LETTER DATED <input type="checkbox"/> STATUTORY NOTICE DATED		(1,988,029.51)	(1,200.00)
INCREASE OR DECREASE IN INCOME: (See attached)			
(a) Business rent expense		1,375.00	-
(b) Losses of business property		2,000,000.00	-
(c) Net operating loss deduction			7,700.00
(d) Standard deduction		(500.00)	(500.00)
TAXABLE INCOME AS REVISED: XXXXXXXXXXXXXXXXXXXX		12,845.49	6,000.00
TAX		3,134.38	1,130.00
TAX SURCHARGE		-	-
TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT		-	-
SELF-EMPLOYMENT TAX, per return		259.20	405.90
SUBTOTAL		3,393.58	1,535.90
LESS TAX CREDITS		-	-
TAX LIABILITY		3,393.58	1,535.90
LIABILITY PREVIOUSLY ASSESSED		259.20	405.90
Per returns			
DEFICIENCY: XXXXXXXXXX		3,134.38	1,130.00

Addition to Tax, section 6651(a) 313.43 159.49
 Addition to Tax, section 6653(a) 156.72 -

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EXPLANATION OF ITEMS

SCHEDULE NO. 886-A
GENERAL

2

YEAR/PERIOD ENDED

Edwin Benjamin

(a) It is determined that the deduction of \$1,375.00 claimed for rent expense on business property is not allowed because it has not been established that the amount was expended for the purpose designated or that the amount represents an ordinary and necessary business expense. Therefore, your taxable income is increased in the amount of \$1,375.00 for the year 1965.

(b) The deduction of \$2,000,000.00 claimed in your 1965 income tax return as losses of business property arising from the alleged confiscation of your business property by the General Services Administration is not allowed because you have not established the amount of the alleged losses, and the alleged losses were not sustained in the year 1965. Therefore, taxable income for the year 1965 is increased \$2,000,000.00.

(c) It is determined that you did not sustain a net operating loss in the taxable year 1965 within the meaning of section 172 of the Internal Revenue Code. Consequently, there is no net operating loss carryover to the year 1966, and income is increased by \$7,700.00.

(d) A maximum standard deduction of \$500.00 is allowable for each of the years 1965 and 1966 in accordance with the provisions of section 141 of the 1954 Internal Revenue Code.

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Exhibit "A" to Petition, Docket No. 6237-69

FROM OFFICE MARKED (X)

- 275 Peachtree St., N. E. • ATLANTA, GA. 30303
- 2121 Eighth Ave., N. • BIRMINGHAM, ALA. 35203
- 901 Sumter St. • COLUMBIA, S. C. 29201
- 320 South Ashe St. • GREENSBORO, N. C. 27401
- 101 North Lamar St. • JACKSON, MISS. 39202
- X 400 W. Bay • JACOBSONVILLE, FLA. 32202
- XXXXXXXXXX
- U. S. Courthouse Bldg. • NASHVILLE, TENN. 37203



U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR

IN REPLY REFER TO

442

Mr. Edwin Benjamin
5005 Collins Avenue
Miami Beach, Florida 33140

SEP 22 1969

DATE OF REPORT

8/15/69

YEAR

1967 & 1968

Dear Mr. Benjamin:

There is enclosed for your information and files a copy of a report covering the examination of your return for the year indicated, recently made by a representative of this office.

Very truly yours,
District Director

cc: Mr. James R. Kaufman, C.P.A.

RC 35 FORM 400 - 125 (REV. 10-59)

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Exhibit "A" to

Petition, Docket No. 6237-69

FORM 1907 (REV. JULY 1967)		U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE			DATE OF REPORT 8/15/69
PRELIMINARY STATEMENT					
NAME OF TAXPAYER(S) M. JAMES BENJAMIN				SHOW SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NUMBER (Husband's number if joint return) 052-14-2184	
SUMMARY OF PROPOSED ADJUSTMENTS					
TAXABLE YEAR	INCOME TAX		OTHER TAX (Specify) DEFICIENCY OR OVERASSESSMENT	PENALTIES - INCREASE OR (DECREASE)	PARTNER, PARTNERSHIP, TRUST, ETC. DEFICIENCY OR SMALL BUS. CORP. INCOME INCREASE OR (DECREASE)
	DEFICIENCY	OVERASSESSMENT			
End 12/31/67	\$ 26,117.18			\$ 3,938.70	
End 12/31/68	206,625.54			41,346.86	
TOTALS	\$232,742.72			\$45,285.56	
NET DEFICIENCY OR OVERASSESSMENT	NAME OF EXAMINER C LAMAN		NAME OF TAXPAYER'S REPRESENTATIVE CPA Mr. James R. Kaufman		AGREEMENT SECURE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
PRINCIPAL CAUSES OF CHANGES, AND OTHER INFORMATION					

The principal cause of ADJUSTMENT was due to failure to substantiate claimed losses.

The penalties shown above are assessed at the rate of 5% for negligence in accordance with the provisions of section 653(a) of the Internal Revenue Code for each year, plus 10% in 1967 under the provisions of section 651 for delinquency. Delinquency penalty of 15% is assessed for the year 1968.

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SCHEDULES AND/OR EXHIBITS ATTACHED

Schedules 1 thru 4
Pages 1 thru 9

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FORM 1041-J (REV. AUG. 1961) TRANSLUCENT		U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE ITEM ADJUSTMENTS - INDIVIDUALS			SCHEDULE NO. 1
NAME OF TAXPAYER(S) Medwin Benjamin				YEAR ENDED/PERIOD 12/31/67	
INCOME	RETURN	INCREASE	DECREASE	CORRECTED	
1. Wages, salaries, bonuses, commissions and other compensation					
2. Dividends					
3. Interest					
4. Pensions and annuities					
5. Rents and royalties					
6. Profit (or loss) from business or profession	57,389.00	✓			57,389.00
7. Profit (or loss) from farming					
8. Gain (or loss) from sale or exchange of capital assets					
9. Gain (or loss) from sale or exchange of non-capital assets					
10. Partnerships					
11. Estates and trusts					
12. Other income					
13. TOTALS (ADJUSTED GROSS INCOME)	57,389.00	✓			57,389.00
ITEMIZED DEDUCTIONS					
14. Contributions					
15. Interest					
16. Taxes					
17. Medical and dental expenses					
18. Child care					
19. Casualty and theft losses					
20. Miscellaneous	57,389.00	(6)	57,387.00		- 0 -
21. TOTALS	57,389.00		57,389.00		
22. STANDARD DEDUCTION (If applicable)				(6) 500.00	500.00
23. Balance (Line 13 less Line 21 or Line 22)	- 0 -		57,389.00	500.00	56,889.00
24. Less: Number of exemptions multiplied by \$600	1,200.00				1,200.00
25. TAXABLE INCOME	(1,200.00)		57,389.00	500.00	55,689.00

FORM 886-A (REV. APRIL 1968)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT 1 - 11
NAME OF TAXPAYER MEDWIN BENJAMIN		YEAR/PERIOD END 12/31/67

(a) Medical Losses (NOL Carryover) \$57,387.20

Mr. Benjamin claimed a \$1,977,530.00 NOL Carryover from 1965, applying 57,387.00 to the current year.

It was found in a prior examination that the claimed loss was without substantiation, and not deductible.

Accordingly no carry over loss is deductible.

Ref. Sections 172, 165, 162, Internal Revenue Code

Per Return	\$ 57,387.00
As Corrected	--
Amount Increased	<u>\$ 57,387.00</u>

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FORM 886-A REV. APRIL 1961	EXPLANATION OF ITEMS	RECEIVED NO. OR EXHIBIT 1-11
NAME OF TAXPAYER MELVIN BENJAMIN		YEAR/PERIOD ENDED 12/31/67
(6) Standard Deduction (Income Decreased)		(\$500.00)

A maximum Standard Deduction has been computed in accordance with the provisions of Section 144⁴¹⁴¹ of the Internal Revenue Code.

Per Return	0
As Corrected	\$500.00
Income Decreased	<u>\$500.00</u>

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U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE		SCHEDULE NO.		
COMPUTATION OF INCOME TAX - INDIVIDUALS		2		
1957 AUG. 1954				
TAXPAYER(S) <i>BENJAMIN</i>		YEAR ENDED/PERIOD <i>12/31/57</i>		
1. Corrected adjusted gross or taxable income (From schedule <i>1</i>)		\$ <i>55,689.00</i>		
2. If tax table is applicable: Tax on corrected adjusted gross income with <i>2</i> exemptions		\$		
3. If tax table is NOT applicable, tax on corrected taxable income - computed for: <input type="checkbox"/> SINGLE PERSON <input type="checkbox"/> SURVIVING SPOUSE <input type="checkbox"/> HEAD OF A HOUSEHOLD <input checked="" type="checkbox"/> MARRIED PERSONS FILING SEPARATELY <input type="checkbox"/> MARRIED PERSONS FILING JOINTLY		\$ <i>26,117.18</i>		
4. Alternative tax, if computed (From schedule _____)		\$		
5. Corrected applicable tax: Line 2, 3, or 4		\$ <i>26,117.18</i>		
6. Less:		\$		
A. Dividends received credit (From schedule _____)				
B. Retirement income credit (From schedule _____)				
C. Investment credit (From schedule _____)				
D. Other allowable credits (if deductions itemized) (From schedule _____)				
7. Balance: Line 5 less total of amounts in line 6		\$ <i>26,117.18</i>		
8. Plus:		\$		
A. Tax from recomputing prior year investment credit (From schedule _____)				
B. Self-employment tax on return or as corrected (From schedule _____) <i>For Return</i>		<i>422.40</i>		
9. Corrected income tax liability - Line 7 plus Line 8		\$ <i>26,539.58</i>		
10. Tax shown on return or as previously adjusted		<i>422.40</i>		
11. Statutory deficiency or (refund) or overassessment - difference between Lines 9 and 10		\$ <i>26,117.18</i>		
COMPUTATION OF ADDITIONAL TAX DUE OR OF NET OVERASSESSMENT				
	SHOWN ON YOUR RETURN		AS CORRECTED	
12. Total income tax liability		\$ <i>422.40</i>		\$ <i>26,539.58</i>
13. Less net adjustments:				
A. Income tax withheld				
B. F.I.C.A. tax credit				
C. Payments on estimated tax				
D. Regulated investment company undistributed capital gain credit				
E. Previous assessments	<i>422.40</i>		<i>422.40</i>	
F. Sum of amounts A through E	\$ <i>422.40</i>		\$ <i>422.40</i>	
G. Excess of previous refunds and/or credits		<i>422.40</i>		<i>422.40</i>
14. Additional tax or (net overassessment)		\$ <i>- 0 -</i>		\$ <i>26,117.18</i>
15. Penalties or additions to the tax, if any				\$ <i>1,326.98</i>

Form 1040-J REV. AUG. 1969 TRANSLUCENT		U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE ITEM ADJUSTMENTS - INDIVIDUALS		SCHEDULE NO. 3	
NAME OF TAXPAYER(S) MADWIN BENJAMIN			YEAR ENDED/PERIOD 12/31/68		
INCOME	RETURN	INCREASE	DECREASE	CORRECTED	
1. Wages, salaries, bonuses, commissions and other compensation.....	1,000	/		1,000 ✓	
2. Dividends.....					
3. Interest.....					
4. Pensions and annuities.....					
5. Rents and royalties.....		/			
6. Profit (or loss) from business or profession.....	294,997	✓		294,997	
7. Profit (or loss) from farming.....					
8. Gain (or loss) from sale or exchange of capital assets.....					
9. Gain (or loss) from sale or exchange of non-capital assets.....					
10. Partnerships.....					
11. Estates and trusts.....					
12. Other income.....	1,017	✓		1,017	
13. TOTALS (ADJUSTED GROSS INCOME)	297,014	✓		297,014	
ITEMIZED DEDUCTIONS					
14. Contributions.....					
15. Interest.....					
16. Taxes.....					
17. Medical and dental expenses.....					
18. Child care.....					
19. Casualty and theft losses.....		/			
20. Miscellaneous <i>Net Remy expenses</i>	298,031	298,031		-0-	
21. TOTALS	298,031	298,031			
22. STANDARD DEDUCTION (If applicable)			1,500	500	
23. Balance (Line 13 less Line 21 or Line 22)	(1,017)	298,031	500	296,514	
24. Less: Number of exemptions multiplied by \$600.....	1200			1,200	
25. TAXABLE INCOME	(217)	298,031	500	295,514	

FORM 886-A (REV. APRIL 1960)	EXPLANATION OF ITEMS	EXHIBIT 3-A
NAME OF TAXPAYER McLain Benjamin		YEAR/PERIOD ENDED 12/31/63

(2) Miscellaneous (Not Carryover) \$278,031⁰⁰

The Benjamin claimed a \$1,921,141⁰⁰ loss carryover from 1965, applying \$298,031.00 to the current year. It was found in a prior examination that the claimed loss was without substantiation and not deductible. Accordingly no carryover loss is deductible.

Ref: Letters 172, 165, 162, Internal Revenue Code

Per Return	\$ 298,031.00
As Corrected	- 0 -
Income increased	<u>\$298,031.00</u>

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Exhibit "A" to Petition, Docket No. 6237-69

FORM 886-A
(REV. APRIL 1968)

EXPLANATION OF ITEMS

EXHIBIT

3-A

NAME OF TAXPAYER

McLain Benjamin

YEAR/PERIOD ENDED

12/31/68

(6) Standard Deduction (Income Account) (\$500.00)

A maximum Standard Deduction has been computed in accordance with the provisions of Section 144⁽¹⁾ of the Internal Revenue Code.

Per Return

As Corrected

Income Decreased

+500.00

-500.00

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U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE		SCHEDULE NO.	
COMPUTATION OF INCOME TAX - INDIVIDUALS		4	
FORM 1009 (REV. AUG. 1964)		YEAR ENDED/PERIOD 12/31/68	
NAME OF TAXPAYER(S) Al. [unclear] [unclear]			
1. Corrected adjusted gross or taxable income (From schedule <u>5</u>)		\$ 295,314	
2. If tax table is applicable: Tax on corrected adjusted gross income with <u>2</u> exemptions		\$	
3. If tax table is NOT applicable, tax on corrected taxable income - computed for: <input type="checkbox"/> SINGLE PERSON <input type="checkbox"/> SURVIVOR'S SPOUSE <input type="checkbox"/> HEAD OF A HOUSEHOLD <input checked="" type="checkbox"/> MARRIED PERSONS FILING SEPARATELY <input type="checkbox"/> MARRIED PERSONS FILING JOINTLY		\$ 192,209.90	
4. Alternative tax, if computed (From schedule <u>5</u>)		\$ 14,415.74	
5. Corrected applicable tax: Line 2, 3, or 4		\$ 206,625.54	
6. Less:			
A. Dividend received credit (From schedule <u>5</u>)			
B. Retirement income credit (From schedule <u>5</u>)			
C. Investment credit (From schedule <u>5</u>)			
D. Other allowable credit, deductions itemized (From schedule <u>5</u>)			
7. Balance: Line 5 less total of amounts in line 6		\$	
8. Plus:			
A. Tax from recomputing prior year investment credit (From schedule <u>5</u>)		\$ 435.00	
B. Self-Employment tax on return or on corrected (From schedule <u>5</u>)		\$	
9. Corrected income tax liability - Line 7 plus Line 8		\$ 207,060.54	
10. Tax shown on return or on previously adjusted		\$ 435.00	
11. Statutory deficiency or (overassessment) - difference between Lines 9 and 10		\$ 206,625.54	
COMPUTATION OF ADDITIONAL TAX DUE OR OF NET OVERASSESSMENT			
		SHOWN ON YOUR RETURN	AS CORRECTED
12. Total income tax liability		\$ 435	\$ 207,060.54
13. Less net adjustments:			
A. Income tax withheld	\$ 195		\$ 195
B. F.I.C.A. tax credit			
C. Payments on estimated tax			
D. Regulated investment company undistributed capital gain credit			
E. Previous assessments	240		\$ 240
F. Sum of amounts A through E	\$ 425		\$ 435
G. Deduct previous refunds and/or credits		435	
14. Additional tax or (net overassessment)		\$ -0-	\$ 206,625.54
15. Penalties or additions to the tax, if any			\$ 10,353.03
			\$ 30,978.57

P.O. Box 35010, Jacksonville, Fla. 32202
US Treasury Department

District Director

Internal Revenue Service

Date:

SEP 22 1969

436

Mr. Medwin Benjamin
 5005 Collins Avenue
 Miami Beach, Florida 33140

Sir:

Taxable Year (See Schedule Attached)
 Ended: Deficiency:

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability discloses a deficiency or deficiencies in the amounts and for the taxable years shown above. Assessment of the deficiency or deficiencies has been made under the provisions of the internal revenue laws applicable to jeopardy assessments. The enclosed statement shows the computation of the deficiency or deficiencies.

If you decide to contest this determination, you must do so by filing a petition within 90 days (150 days if you are outside the States of the Union and the District of Columbia) from the date of this letter with the Tax Court of the United States in accordance with its rules. A copy of the rules of the Court may be obtained by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D. C. 20044.

Very truly yours,

Randolph W. Thrower

Commissioner

By E. J. O'DONNELL, JR.

District Director

Enclosure:
 Statement

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Mr. Medwin Benjamin
Miami Beach, Florida

Schedule

Taxable Year Ended	Deficiency	Delinquency Penalty Section 6651(a)	Negligence Penal Section 6653(a)
December 31, 1967	\$ 26,117.18	\$ 2,611.72	\$ 1,326.98
December 31, 1968	206,625.54	30,993.83	10,353.03

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Exhibit "A" to Petition, Docket 6237-69

FORM 4039
(JANUARY 1966)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

STATUTORY NOTICE STATEMENT

SYMBOLS

436

Mr. Edwin Benjamin
5005 Collina Avenue
Miami Beach, Florida 33140

KIND OF TAX

Income

TAXABLE YEAR ENDED	Deficiency	Additions to the Tax (IRC of 1954)	
		Delinquency Penalty Section 6651(a)	Negligence Penalty Section 6653(a)
December 31, 1967	\$26,117.18	\$ 2,611.72	\$ 1,326.93
December 31, 1968	<u>206,625.54</u>	<u>30,993.83</u>	<u>10,353.03</u>
Total	\$232,742.72	\$33,605.55	\$11,680.01

Since your income tax returns for the taxable years 1967 and 1968 were not filed within the time prescribed by law and you have not shown that such failure to timely file your returns was due to reasonable cause, 10 per centum of the tax is added for the year 1967 and 15 per centum of the tax is added for the year 1968 as provided by Section 6651(a) of the Internal Revenue Code of 1954.

It is determined that part of the underpayment of tax for the taxable years 1967 and 1968, is due to negligence or intentional disregard of rules and regulations. Consequently, the 5 per centum addition to the tax provided by Section 6653(a) of the Internal Revenue Code of 1954 is asserted for each of those years.

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Mr. James R. Kaufman
Certified Public Accountant
150 Southeast Second Avenue
Miami, Florida 33131

☐ Copy to Authorized Representative:

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-2-

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE		AUDIT STATEMENT SCHEDULE	
INDIVIDUAL INCOME TAX		A	
NAME		TAXABLE YEARS ENDED	
		12-31-67	12-31-68
Mr. Edwin Benjamin			
(A) TAXABLE INCOME (COMPUTED FROM INCOME AS ADJUSTED)		\$ (1,200.00)	\$ (2,217.00)
(B) Net Operating Loss Deduction		57,389.00	298,031.00
(C) Standard Deduction		(500.00)	(500.00)
(A) TAXABLE INCOME (COMPUTED FROM INCOME AS ADJUSTED)		\$ 55,689.00	\$ 295,314.00
TAX BASED ON: HEAD OF HOUSEHOLD <input type="checkbox"/> SEPARATE RETURN <input checked="" type="checkbox"/> JOINT RETURN <input type="checkbox"/>		\$ 26,117.18	\$ 192,209.80
ADD: SELF-EMPLOYMENT TAX		422.40	435.00
EXCESS Tax Surcharge		\$	\$ 14,415.74
LESS: TAX CREDITS			
TAX LIABILITY AS CORRECTED		\$ 26,539.58	\$ 207,060.54
LIABILITY PREVIOUSLY ASSESSED 5922223001062-8 5922117495005-9		422.40	435.00
DEFICIENCY		\$ 26,117.18	\$ 206,625.54
Section 6651(a)		2,611.72	10,993.83
Section 6653(a)		1,326.98	10,353.03

TAX COMPUTATION

Statement -3-

Mr. Edwin Benjamin

(a) It is determined that you did not sustain a net operating loss in the taxable year 1965. Consequently, there is no net operating loss carryover to the taxable years 1967 and 1968. Therefore, your taxable income is increased \$57,389.00 for the year 1967 and \$298,031.00 for the year 1968.

<u>Year</u>	<u>Per Return</u>	<u>As Determined</u>	<u>Adjustment</u>
1967	\$57,389.00	-0-	\$ 57,389.00
1968	298,031.00	-0-	298,031.00
Total	<u>\$355,420.00</u>	<u>-0-</u>	<u>\$355,420.00</u>

(b) It is determined that you are allowed the standard deduction of \$500.00 under Section 141 of the Internal Revenue Code for each of the taxable years 1967 and 1968. Accordingly, your taxable income is decreased \$500.00 for the year 1967 and \$500.00 for the year 1968.

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Answer to Petition, Docket No. 6237-69

ORIGINAL.

UNITED STATES TAX COURT

BERNARD BENJAMIN, PETITIONER,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 6237-69

ANSWER

BERNARD BENJAMIN, in answer to the petition filed in the above-entitled case, admits and denies as follows:

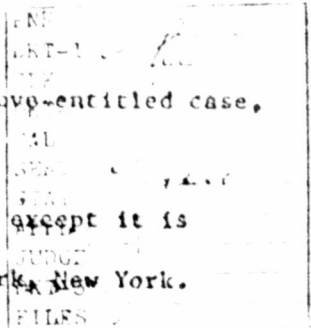
1. Admits the allegations of paragraph 1 of the petition except it is denied that petitioner resides at 86 Central Park West, New York, New York.

2 and 3. Admits the allegations of paragraphs 2 and 3 of the petition.

4. (a) and (b). Denies the allegations of error of subparagraphs (a) and (b) of paragraph 4 of the petition.

5. (a). Admits the allegations of subparagraph (a) of paragraph 5 of the petition.

(b). Denies the allegations of subparagraph (b) of paragraph 5 of the petition except it is admitted that on January 9, 1951, suit was filed against petitioner by the United States of America in the United States District Court for the Eastern District of New York known as Case No. 11391; admits that said suit sought a money judgment against defendant (petitioner herein) of \$934,498.00 plus interest for merchandise sold and delivered by the United States to petitioner; admits that on February 21, 1951, a judgment was entered in that case in favor of the United States against petitioner in the sum of \$1,137,287.00; and admits that the receiver therein re-



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Answer to Petition, Docket No. 6237-69

ceived gross proceeds from the sale of the assets involved in the amount of \$752,651.00, which after deductions of receiver's and attorneys fees, etc., the sum of \$582,674.00 was paid to the Government.

(c). Denies the allegations of subparagraph (c) of paragraph 5 of the petition except it is admitted that on October 28, 1952, petitioner filed suit against the United States of America in the Court of Claims, Case No. 538-52; admits that petitioner's main cause of action therein was a claim against the United States of America for breach of an agreement to withhold execution on the judgment obtained in the District Court suit pending study and evaluation of petitioner's alleged setoffs against the Government; and admits that petitioner sought damages of several million dollars against the Government.

(d). Admits the allegations of subparagraph (d) of paragraph 5 of the petition except it is denied that the Court of Claims case was vigorously and actively litigated for thirteen (13) years.

(e) through (h). Denies the allegations of subparagraphs (e) through (h) of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiencies determined by the respondent be in all respects approved.

K. Martin Worthy
K. MARTIN WORTHY,
Chief Counsel,

Internal Revenue Service.

OF COUNSEL:

HENRY C. STOCKELL, JR.,
Regional Counsel,
GLENN W. GILSON, II,
Attorney,
Internal Revenue Service,
1220 Federal Office Building,
51 S. W. First Avenue,
Miami, Florida 33130.

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Petition, Docket No. 5056-73

FILED *R*

TAX COURT OF THE UNITED STATES

1973 JUL 2 AM 11 24

MILTON BENJAMIN,

Petitioner,

UNITED STATES
TAX COURT

DOCKET NO. 5056-73

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

PETITION

The above named Petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiencies, dated April 24, 1973 (Form L-21) and as a basis for his petition alleges as follows:

1. Petitioner is an individual residing at 1530 Palisades Avenue, Fort Lee, New Jersey. The returns for the periods here involved were filed with the District Director for the District of Florida.

2. The notice of deficiencies was mailed to Petitioner at 1530 Palisades Avenue, Fort Lee, New Jersey on April 24, 1973. Copy of this notice is attached and marked "Exhibit A".

3. The deficiencies as determined by the Commissioner are income taxes for the calendar years 1969 through 1970 in the amounts of \$99,494.54 and \$3,592.63 which is in dispute.

4. The determination of tax set forth in the aforesaid notice of deficiencies is based upon the following errors:

ONLY COPY AVAILABLE

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Petition, Docket No. 5056-73

a. As to the year ended December 31, 1969, the Commissioner erred in disallowing the deduction of \$2,000,000.00 claimed in Petitioner's 1969 and 1970 income tax return as a loss of business property arising from the condemnation of Petitioner's business property by the General Services Administration. The Commissioner's determination that said \$2,000,000.00 loss was not established and that the loss was not sustained in the year 1965 as its basis in disallowing the loss is in error. This disallowance, which Petitioner claims was in error, led to the deficiencies in the years 1969 and 1970 as Petitioner's claimed net operating loss arising from the \$2,000,000.00 loss of business property was disallowed in each of those two years.

5. The facts upon which the Petitioner relies as the basis of his case are as follows:

a. In 1951 and for several years prior thereto Petitioner operated a business under the tradename "Benjamin's for Motors". This business involved the purchase, restoration and resale of new and used machines. The machines were primarily purchased from the War Assets Administration.

b. On January 9, 1951, suit was filed against Petitioner by the United States of America in the U.S. District Court for the Eastern District of New York known as Case No. 11391. That suit sought a money judgment against Defendant (Petitioner herein) of \$934,493.00 plus interest for merchandise allegedly sold and delivered by the War Assets Administration to Petitioner. On February 21, 1951, a judgment was entered in that case in favor of the United States of America against Petitioner in the sum of \$1,137,787. Supplemental proceedings commenced on the judgment and on February 7, 1952, the Court appointed receiver conducted a public sale at which all of Petitioner's inventory and business properties were sold. The receiver received gross proceeds from the sale of \$752,651 and, after deductions of receiver's and attorneys fees, etc. \$582,674 was paid to the government. The balance remains unpaid to date.

c. On October 28, 1952, a few months after the receiver's sale of Petitioner's assets in the District Court case, Petitioner filed suit against the United States of America in the Court of Claims, which suit was assigned No. 538-52.

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The main cause of action in that suit was a claim against the United States of America for breach of an agreement to withhold execution on the judgment obtained in the Court suit pending study and evaluation of Petitioner's claim against the government for defective merchandise, breach of warranty of fitness and merchantability, etc. In that Court of Claims case Petitioner, in good faith and on advice of counsel, actively litigated his claim that the government violated its agreement with him by liquidating his business property and business assets when it promised not to liquidate his assets until Petitioner's counterclaims and set-offs were computed and credited against Petitioner's obligation to the government. Petitioner sought damages of several million dollars against the government on the grounds that his business assets had a basis and value which was several million dollars more than the amount realized by the government at the receiver's sale.

d. The Court of Claims case was vigorously and actively litigated for thirteen (13) years. A decision was finally rendered by the Court of Claims on July 16, 1965, in a sixty-nine (69) page opinion. Although the Court of Claims found for Petitioner on some of his causes of action, it decided against him in his cause of action based upon the government's liquidation of his business assets.

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e. Petitioner's Court of Claims suit against the government was filed on advice of counsel, in good faith and was an attempt by Petitioner to exhaust his remedies to recoup the losses that he believed the government caused him. Petitioner litigated aggressively and at all times reasonable believed that there was a reasonable prospect of recovery and that he would prevail in the Court of Claims action. Since the possibility of recouping his loss did not terminate until the adverse Court of Claims decision on July 16, 1965, Petitioner's loss for tax purposes occurred in 1965 which was when Petitioner claimed it in his tax return for the first time.

f. The original books and records of Petitioner's business are available and substantiate the amount of the loss claimed by Petitioner in his 1965 income tax return and carried over in the years 1966, 1967 and 1968, 1969, 1970.

g. Since Petitioner had a good faith belief in the propriety of his business loss deduction, took the loss upon advice of professional advisers.

Petition, Docket No. 5056-73

WHEREFORE, petitioner prays that this Court
in this case and determine that there are no deficiencies
owed by Petitioner for the years 1965 through 1970 inclusive
and for such other and further relief as the Court may deem
fit and proper in the circumstances.


EDWIN BENJAMIN, Petitioner

STATE OF NEW JERSEY)

: SS.

COUNTY OF BERGEN)

Exhibit "A" to Petition, Docket No. 5056-73

Department of the Treasury
 PO Box 3100, Church St. Sta., New York, N.Y. 10009

District Director
 Internal Revenue Service

Date:

APR 24 1973

In reply refer to:

NY-P-000

Tel. 264-3109



Mr. Edwin Benjamin
 1530 Palisade Avenue
 Fort Lee, New Jersey 07024

Dear Sir:

Tax Year Ended:

12/31/69

12/31/70

Deficiency

\$99,494.54

3,592.63

3,592.63

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Sincerely yours,
 Johnnie M. Walters
 Commissioner
 By

District Director

Enclosures:
 Waiver
 Statement
 Envelope

Exhibit "A" to Petition, Docket No. 5056-73

UNITED STATES OF THE TREASURY - INTERNAL REVENUE SERVICE
**WAIVER OF RESTRICTIONS ON ASSESSMENT AND
 COLLECTION OF DEFICIENCY IN TAX AND
 ACCEPTANCE OF OVERASSESSMENT**

DATE RECEIVED BY
 INTERNAL REVENUE
 SERVICE

Section 6213(d) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, the taxpayer waives the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, and consents to the assessment and collection of the following deficiencies with interest as provided. The undersigned also accepts the following overassessments as correct:

DEFICIENCIES

YEAR ENDED	KIND OF TAX	AMOUNT OF TAX	PENALTY
12/31/69	Income	\$98,421.54	
12/31/70	Income	3,895.63	

OVERASSESSMENTS

YEAR ENDED	KIND OF TAX	AMOUNT OF TAX	PENALTY

NAME AND ADDRESS OF TAXPAYER(S) (Number, street, city or town, State, ZIP Code)

(The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.)

DATE

DATE

TITLE

DATE

NOTE: The execution and filing of this waiver will expedite adjustment of your tax liability. It is not, however, a final closing agreement under section 7121 of the Internal Revenue Code and does not preclude assertion of a further deficiency in a manner provided by law if it is later determined that a final tax is due; nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

Furthermore, execution and filing of this waiver will not include the taxpayer's filing under section 6411 of the Code a claim for refund or credit, on which (if disallowed by the Service) suit may be brought in the appropriate District Court or the U.S. Court of Claims.

If this waiver is for a year for which a JOINT RETURN is filed, it must be signed by both husband and wife unless

one, acting under a power of attorney, signs as agent for the other.

If the taxpayer is a corporation, this waiver must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign.

This waiver may be signed by the taxpayer's attorney or agent provided his action is specifically authorized by a power of attorney which, if not previously filed, must accompany the form.

If this waiver is signed by a person acting in a fiduciary capacity (such as executor, administrator, trustee, etc.), Form 56, "Notice of Fiduciary Relationship," should, unless previously filed, accompany this form.

APR 24 1973

Exhibit "A" to Petition, Docket No. 5056-73

Statement

Medvin Benjamin
1530 Palisade Avenue
Fort Lee, New Jersey 07024

Tax Liability for the Taxable Years Ended

December 31, 1969

December 31, 1970

Income Tax

<u>Taxable Years Ended</u>	<u>Deficiency</u>
December 31, 1969	\$99,494.54
December 31, 1970	3,592.63

Tax stated deficiencies are based on adjustments and explanations set forth in detail below.

A copy of this letter and statement is being mailed to your representatives, James R. Kaufman, CMA, 150 S.E. Second Avenue, Miami, Florida 33131 and Stanley Arthur Bailey, Esq. 341 Pan American Park Building, Miami, Florida 33131 in accordance with instructions contained in the power of attorney executed by you.

Adjustments to Income
and
Computation of Tax

	<u>1969</u>	<u>1970</u>
Taxable income (loss) disclosed by return	\$(1,200.00)	(\$ 625.00)
Increase (decrease) in income:		
(a) Miscellaneous deductions -		
Net operating loss carryforward	151,042.00	15,000.00
(b) Standard deduction	(500.00)	(500.00)
(c) Exemption	600.00	-
Taxable income adjusted	<u>\$149,942.00</u>	<u>\$13,875.00</u>
Tax on above	<u>\$ 99,494.54</u>	<u>\$ 3,592.63</u>
Plus: Self-employment tax	538.20	538.20
Corrected income tax liability	<u>\$100,032.54</u>	<u>\$ 4,130.83</u>
Tax shown on return	<u>538.00</u>	<u>538.20</u>
Deficiency in income tax	<u><u>\$ 99,494.54</u></u>	<u><u>\$ 3,592.63</u></u>

Benjamin Benjamin

-2-

Statement

Explanation of Adjustments

(a) It is determined that you did not sustain a net operating loss in the taxable year 1965 within the meaning of Section 172 of the Internal Revenue Code. Consequently, there is no net operating loss carryforward to the years 1969 and 1970 and income is increased for those years by \$151,042.00 and \$15,000.00 respectively.

(b) A maximum standard deduction of \$500.00 is allowable for each of the years 1969 and 1970 in accordance with the provisions of section 141 of the Internal Revenue Code.

(c) Your claimed deduction for one exemption for your wife in the year 1970 is disallowed. You did not establish that she qualified as an exemption under Section 151 of the Internal Revenue Code.

Answer to Petition, Docket No. 5056-73

UNITED STATES TAX COURT

MEDWIN BENJAMIN,

Petitioner,

1973 AUG 29 PM 3 13

v.

COMMISSIONER OF INTERNAL REVENUE,
UNITED STATES TAX COURT

Respondent.

Docket No. 5056-73

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1, 2. and 3. Admits the allegations of paragraphs 1, 2 and 3 of the petition.

4. a. Denies that the respondent erred as alleged in subparagraph a. of paragraph 4 of the petition.

5. a. and b. Admits the allegations of subparagraphs a. and b. of paragraph 5 of the petition.

c. Admits the allegations contained in the first, second and fourth sentences of subparagraph c. of paragraph 5 of the petition; denies the remaining allegations of said subparagraph.

d. Admits the allegations contained in the second and third sentences of subparagraph d. of paragraph 5 of the petition; denies the remaining allegations of said subparagraph.

e. Denies the allegations of subparagraph e. of paragraph 5 of the petition.

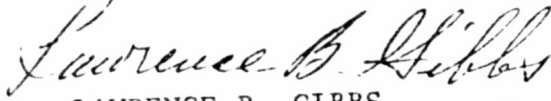

SERVED AUG 29 1973

f. Denies the allegations of subparagraph f. of paragraph 5 of the petition.

g. Denies the allegations of subparagraph g. of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiencies determined by the respondent be in all respects approved.


LAWRENCE B. GIBBS,
Acting Chief Counsel,
Internal Revenue Service. 

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
STANLEY J. GOLDBERG,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

UNITED STATES TAX COURT
CALENDAR CALL

MEDWIN BENJAMIN,

Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

Docket No. 6237-69

LOCATION OF HEARING:

26 Federal Plaza
New York, New York

DATE:

November 13, 1972

BEFORE:

Arnold Raum, Judge

APPEARANCES:

MEDWIN BENJAMIN,
Pro Se

STANLEY J. GOLDBERG, Esq.,
- and -

WALTER C. WELSH, Esq.,
Attorneys of Respondent
26 Federal Plaza
New York, New York

1 THE CLERK: Docket Number 6237-69, Medwin Benja-
2 min.

3 Your appearances, please.

4 MR. BENJAMIN: Medwin Benjamin, for himself.

5 MR. GOLDBERG: Stanley J. Goldberg, for the
6 Respondent.

7 MR. WELSH: Walter C. Welsh, for the Respondent.

8 MR. GOLDBERG: Your Honor, the parties are ready
9 to go to trial in this case.

10 MR. BENJAMIN: If your Honor please, one of
11 my main witnesses have been sick for two weeks.

12 The other has been ducking me.

13 Last year, around this time, I came here and I
14 was ready to go to trial. However, Mr. Goldberg didn't
15 know what we were going to trial for.

16 And I want to know what I am going to trial for.
17 There was a stipulation of facts made, signed by the
18 Government, and signed by myself, which Mr. Goldberg
19 refuses to acknowledge.

20 If I am not going to trial on the stipulation of
21 facts, then I need different kinds of witnesses. And,
22 if I am going to trial on the stipulation of facts,
23 then I need other kinds of witnesses.

24 Does the Court recognize the stipulation that
25 was signed by the Government?

1 THE COURT: Is there a stipulation in this case?

2 MR. GOLDBERG: I have prepared a stipulation in
3 this case. This case was transferred on Mr. Benjamin's
4 request from Miami to New York sometime last year,
5 due to the fact that his attorney was here and his
6 books and records were here.

7 When I reviewed the case, I found the stipulation
8 to be incomplete. It didn't contain all the facts in
9 the case.

10 I told Mr. Benjamin that and he was not interested
11 in listening to any corrections of the stipulation of
12 facts in that case.

13 THE COURT: Are you talking about corrections
14 or additions?

15 MR. GOLDBERG: Additional figures, your Honor.

16 THE COURT: Were you satisfied with the accuracy
17 of what was stipulated?

18 MR. GOLDBERG: No, I am not, your Honor.

19 It was never filed with this Court.

20 MR. BENJAMIN: If your Honor please, if the
21 stipulation wasn't filed, it was just through ignorance
22 of the Court's rules.

23 However, I do have a stipulation in my pocket.
24 It was entered to the Judge who was here last year,
25 and he continued the case.

1 If the facts, or if the stipulation, or if the
2 items that the Government has agreed to hasn't been
3 agreed to, then what's the use of signing stipulations?

4 MR. GOLDBERG: Your Honor, the rules of the
5 Court require that the parties to stipulate those
6 facts which are generally not in dispute.

7 The original stipulation was an incomplete stipu-
8 lation, just as though Mr. Benjamin had been able to
9 engage different counsel who might have seen the
10 case differently.

11 I prepared a new stipulation of facts. I would
12 like Mr. Benjamin to look at it.

13 I see no reason why there isn't a fact in here
14 that isn't in dispute.

15 Mr. Benjamin had problems last time. It is a
16 very short factual stipulation.

17 The stipulation that I prepared means there is
18 very little trial work necessary by Mr. Benjamin.

19 MR. BENJAMIN: Your Honor, this is nothing short
20 of the stipulation that I have in my pocket that was
21 presented after three months of counseling with the
22 Government in Miami.

23 If the Government in Miami is different from the
24 Government in New York State, that is another thing.

25 THE COURT: Mr. Benjamin, the Government

1 apparently has additional matters that it wishes
2 stipulated, and it says it has prepared a copy of
3 the stipulation.

4 Have you examined it?

5 MR. BENJAMIN: I haven't seen it. It hasn't
6 been presented to me and I don't think I am capable
7 of looking at it at the spur of the moment.

8 I have a stipulation which he cunningly didn't
9 include in the stipulation of the Court. What's the
10 reason for that?

11 THE COURT: The purpose of a trial is to try
12 those facts that are not in dispute between the
13 parties.

14 MR. BENJAMIN: If your Honor please -- I am
15 sorry.

16 THE COURT: I am going to ask you to examine
17 the Government's proposed stipulation and fairly
18 make up your mind whether the materials that it
19 wishes stipulated are materials that are, in fact,
20 true. And if they are, in fact, true, I am going
21 to ask you to join in that stipulation.

22 If they are not true, you are not required to.

23 MR. BENJAMIN: Yes, your Honor.

24 May I read this to you, your Honor?

25 May I read part of this stipulation to you?

1 It says here, on Item No. 15 --

2 THE COURT: You are reading?

3 MR. BENJAMIN: The Government's stipulation here.

4 THE COURT: Just a moment.

5 There are two documents that have been referred
6 to orally as stipulations.

7 One is a document that was executed and not filed
8 in Miami, and secondly, there is a document which the
9 Government has drafted and which you apparently said
10 you haven't seen.

11 Now you are reading from the first one, I take
12 it?

13 MR. BENJAMIN: I am reading from the stipulation
14 that Mr. Goldberg sent to me on December 29th at my
15 request.

16 He had this in his file at all times. It was
17 filed in Miami, sir.

18 THE COURT: Which one are you talking about?

19 MR. BENJAMIN: May I read this here? I don't
20 know the procedure here.

21 THE COURT: You have got to communicate things
22 accurately to me and you are jumping the gun.

23 Is this the stipulation that was executed in
24 Miami?

25 MR. BENJAMIN: Yes, sir.

1 THE COURT: This is not the stipulation that Mr.
2 Goldberg has prepared and wants you to sign now?

3 MR. BENJAMIN: No, sir.

4 THE COURT: I am going to ask you to examine the
5 stipulation that he wants you to sign and to determine
6 whether the facts therein are true and, if they are
7 true, I expect you to sign it.

8 MR. BENJAMIN: May I read this to you, your
9 Honor?

10 On Item 15 it says that, "Parties agreed that the
11 items to be determined by the Court in regard to the
12 laws are as follows: (a) Did the loss occur in 1951?
13 (b) Did the loss occur in 1952 when the assets were
14 seized? (c) Did the loss occur in 1952 when the
15 assets were alleged by Petitioner to have been sold
16 pursuant to the procedure?"

17 These are the three items that I expected to be
18 tried before this Court. And I think I could very well
19 try them in about fifteen minutes.

20 If Mr. Goldberg has a very big list of items
21 which he wants me to try and I need additional counsel,
22 which I can't afford, that is something else.

23 MR. GOLDBERG: Your Honor, may I say something?

24 THE COURT: Yes.

25 MR. GOLDBERG: The statutory notice disallows the

1 loss for the first year before the Court, in 1965,
2 because the taxpayer has not established the amount
3 of the alleged losses in the year in which they were
4 sustained.

5 MR. BENJAMIN: Your Honor, we are not trying the
6 case.

7 THE COURT: Let him finish.

8 MR. GOLDBERG: When the case came to me in Miami,
9 I was not satisfied that these were the stipulations
10 to be tried before the Court.

11 Mr. Benjamin had not established the amount of
12 the loss.

13 This stipulation that was signed in Miami sort
14 of implies that a loss was sustained.

15 We are not certain that a loss was sustained
16 because the taxpayer hasn't established the amount of
17 the loss nor the year it was sustained in.

18 I told Mr. Benjamin this last December.

19 This case was heard before Judge Quealy and he
20 continued it.

21 I told Mr. Benjamin this again. When I came in
22 two weeks ago, I said I would prepare a new stipulation
23 as to what the original facts were, striking out the
24 issues to be tried before the Court in this case.

25 In fact, my stipulation is not as lengthy, but

1 it is more complete.

2 Mr. Benjamin said he would be out of town. That's
3 why it was not sent to him last Wednesday.

4 I am ready to go to trial and I have a stipulation
5 which accurately stipulates the facts. And there is
6 very little more for Mr. Benjamin to do than to stipu-
7 late the amount of the loss.

3 8 MR. BENJAMIN: If Mr. Goldberg thinks I distorted
9 the facts, he is wrong. All I read was the items that
10 were on the paper and that is what I am willing to
11 try.

12 THE COURT: The things that are being tried be-
13 fore the Court are the correctness or the incorrect-
14 ness of the Government's determination.

15 MR. BENJAMIN: Your Honor, the things that are
16 being tried before the Court is to whether I am entitled
17 to a \$200,000 tax carried forward.

18 This is not a decision that is being tried from
19 1969. That was an afterthought.

20 If your Honor is confused about the matter, the
21 other Judge was confused, too.

22 He said, "Why didn't you put this in?"

23 I didn't know that he put this in.

24 THE COURT: I am not confused. I am merely dis-
25 turbed that the parties have not been able to come to

1 an agreement as to the proper stipulation to be filed
2 with the Court.

3 MR. BENJAMIN: May I file this with the Court
4 now, your Honor?

5 MR. GOLDBERG: I object, your Honor.

6 THE COURT: If it is appropriate to be filed,
7 you may tender it at the time of the trial.

8 MR. BENJAMIN: Can they disregard this at the
9 time of the trial?

10 THE COURT: I am not giving you any interlocutory
11 rulings at this time.

12 The Court has the power, in any event, to relieve
13 one of the parties from what is called an improvident
14 stipulation.

15 MR. BENJAMIN: Are you deciding now, your Honor,
16 that this is improvident?

17 THE COURT: No, I am not.

18 I am telling you what the rule of law is.

19 If there should be an improvident stipulation in
20 this case -- I am talking about a stipulation that has
21 been filed. This is a stipulation which has not been
22 filed.

23 MR. BENJAMIN: Your Honor, please --

24 (Judge wields gavel.)

25 THE COURT: If this stipulation has been filed,

1 and if, in my judgment, it was an improvident stipula-
2 tion, under established rules, I would have the power
3 to grant relief from it.

4 I don't know whether this is such a stipulation
5 or not, I have not read it.

6 If that became a matter in controversy between
7 the parties, I would so read it and I would make a
8 determination after I saw it.

9 Meanwhile, however, I can require the parties
10 to enter into as full and complete a stipulation of
11 facts as they can do, each of them bearing in mind
12 that the Court wants the truth as to the materials
13 contained in the stipulation to be understood and
14 agreed to by the parties.

15 If they are not agreed upon, you are not required
16 to stipulate.

17 Let's bring this matter to a head.

18 MR. BENJAMIN: May I say something to you?

19 Is it the power of the Court to argue the stipula-
20 tion at the present time before the argument of my
21 present loss?

22 THE COURT: I don't know enough about your case
23 to make any such determination, Mr. Benjamin.

24 I don't know enough about it and I am not going
25 to make any curbstone judgment on it.

1 MR. BENJAMIN: May I present my stipulation to
2 the Court so that you may read it?

3 THE COURT: I would have to read it in the context
4 of the things that the Government wants to present now,
5 and I can't tell what weight to attribute to the
6 so-called first stipulation in relation to the second
7 one.

8 I am asking you to examine what the Government
9 wants you now to stipulate and if the matters which
10 it is asking you to stipulate to are accurate and
11 truthful, you are required to stipulate them.

12 If they are not, you needn't do so.

13 If they can be made accurate by any changes,
14 you are required to suggest those changes to the
15 Government.

16 MR. GOLDBERG: Your Honor, when would you like
17 to put this case on?

18 THE COURT: When can this case be tried?

19 MR. BENJAMIN: As soon as I know what they are
20 trying to do and as soon as I know whether you will
21 accept the stipulations.

22 I need certain witnesses in one way, and what
23 he is trying to do, I will probably need a whole
24 raft of them, so it may go on for two years, for all
25 I know.

1 THE COURT: Are you a lawyer, Mr. Benjamin?

2 MR. BENJAMIN: No, I never was. I have an
3 eighth grade of schooling.

4 MR. GOLDBERG: Your Honor, this case was trans-
5 ferred to our New York office from Miami because his
6 attorney was here.

7 MR. BENJAMIN: Your Honor, I can't afford an
8 attorney and I am representing myself.

9 If I can't agree to the stipulation, I am going
10 to ask the Court to appoint a lawyer for me.

11 THE COURT: I think we should talk to counsel
12 in the chambers.

13 MR. GOLDBERG: The stipulation we have presented
14 presents all the facts.

15 The only thing Mr. Benjamin has to do is sub-
16 stantiate the amount of his loss and a factual pattern
17 of the facts in the chronological order in this case.

18 The 1965 year is the year Mr. Benjamin claimed
19 a two million dollar loss. We have the 1965 year.

20 1966 was carried forward for 1967 and 1968.
21 Those are the four years before the Court.

22 THE COURT: Very well, gentlemen. I may wish
23 to speak with you in chambers. You will be notified.

24 MR. GOLDBERG: Thank you.

UNITED STATES TAX COURT

Certificate of Reporter

Case Docket No.: 6237-69

Case name: Medwin Benjamin.

I, THOMAS W. MURRAY, associated with
National Reporting Co., Inc., do hereby certify that I
was present during the trial of the above-entitled case
before this Court at its session in New York New York
and recorded verbatim by means of Stenotype
recording everything spoken during the trial, unless other-
wise directed by the Court, and

That the foregoing pages numbered 1 to 13,
inclusive, are the true, accurate and complete transcript
prepared from the verbatim record made by me on Nov.
13, 1972, in accordance with the applicable provisions of
the current verbatim reporting contract of the Court under
which I have performed my duties as reporter.

November 27, 1972
(Date)

Thomas W. Murray
(Signature of Reporter)

62a
Transcript of Proceeding before the
Tax Court, November 20, 1972

UNITED STATES TAX COURT

MEDWIN BENJAMIN,

Petitioner,

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

Docket No. 6237-69

LOCATION OF HEARING:

26 Federal Plaza
New York, New York

DATE:

November 20, 1972
10:35 o'clock a.m.

BEFORE:

Arnold Raum, Judge

APPEARANCES:

STANLEY J. GOLDBERG, Esq.,
Attorney for Respondent
26 Federal Plaza
New York, New York 10007

WALTER C. WELCH, Esq.,
Attorney for Respondent
26 Federal Plaza
New York, New York 10007

I N D E X

W I T N E S S E S

WITNESS:

DIRECT CROSS REDIRECT RECROSS

(NONE)

E X H I B I T S

(NONE)

1 THE CLERK: Docket Number 6237-69, Medwin Benja-
2 min.

3 MR. GOLDBERG: Stanley J. Goldberg for the
4 Respondent.

5 MR. WELCH: Walter C. Welch for the Respondent.

6 THE CLERK: No response for the Petitioner, your
7 Honor.

8 THE COURT: Have you been in touch with the
9 Petitioner?

10 MR. GOLDBERG: No, we haven't been in touch with
11 the Petitioner at all. I believe he Clerk spoke to
12 Petitioner either Thursday or Friday.

13 THE COURT: Well, the Court was informed that
14 Mr. Benjamin's brother had died and that this had
15 occurred since the case was called last Monday.

16 MR. GOLDBERG: I believe that is correct, your
17 Honor.

18 THE COURT: Does counsel have any suggestion
19 as to any further procedure in this case?

20 MR. GOLDBERG: I would suggest perhaps I would
21 be willing to try this case on Friday, if possible,
22 or Wednesday, whenever we could get ahold of Petitioner.

23 I am not inclined to move for continuance, your
24 Honor, in this case. This case has been continued
25 twice before. I was reading the transcript of the

1 proceeding in Miami, and Judge Atkins said he wouldn't
2 recommend any further continuances in this case.

3 It was continued last December to January by
4 Judge Quealy.

5 And it appears this is -- these years -- this
6 year is relatively old. And I think to expedite
7 justice this case should be tried this calendar, if
8 at all possible.

9 THE COURT: Well, today appears to be the last
10 day this Court is going to be in session in New York.

11 At the time Judge Atkins made his statement in
12 Miami, the case apparently had a different posture
13 and did not involve the issues that I understand the
14 Government plans to raise in this litigation.

15 MR. GOLDBERG: You mean as far as the underlying
16 rationale for the loss itself?

17 THE COURT: Well, I had understood at a pre-trial
18 conference that I had with Government counsel and the
19 Petitioner that the Government was intending to raise
20 the question whether the loss or alleged loss was of
21 such character that even if the amount is established
22 and the date is established that it is, nevertheless,
23 not a deductible loss under the statute.

24 I had also understood that the Petitioner was
25 going to object to the Government's raising this

1 issue, and he was going to rely upon a stipulation of
2 the facts, which had been executed in Miami but never
3 filed with this Court, and that the Government, in
4 turn, was demanding that a more complete stipulation
5 of facts be executed and that it not be bound by any
6 limitations in the earlier and unfiled stipulation.

7 MR. GOLDBERG: That is correct, your Honor.

8 THE COURT: This basic issue was not before
9 Judge Atkins or, apparently, he did not understand
10 that it was involved.

11 I have no idea what was presented to Judge
12 Quealy.

13 MR. GOLDBERG: Well, the same particular problem
14 was presented to Judge Quealy.

15 The taxpayer was advised at least a month and
16 a half, two months, before the calendar on the case
17 last time that the Government had no intention of being
18 bound by the proposed stipulation in that case. So
19 the record, it doesn't show on the record. All Judge
20 Quealy issued was a continuance, ordered a continuance
21 of the case.

22 THE COURT: I will state for the record if it
23 is of any consolation to the Government that I do not
24 regard that earlier stipulation as binding since it
25 was an unfiled stipulation, and that the matter which

1 the Government wishes to raise is one that the Court
2 could raise on its own motion under a well-established
3 line of cases, of which the DeGroff case is one.

4 MR. GOLDBERG: I have a citation if your Honor
5 wants it.

6 THE COURT: You can give me the citation.

7 MR. GOLDBERG: 54 TC 5970 decision.

8 THE COURT: That case in turn cites a number of
9 other decisions to the same effect.

10 MR. GOLDBERG: Your Honor, Mr. Benjamin is here.

11 MR. BENJAMIN: Thanks for announcing me.

12 THE COURT: Mr. Benjamin, your case has been
13 called.

14 MR. BENJAMIN: Yes, sir.

15 THE COURT: Would you step forward, please?

16 MR. BENJAMIN: Sure.

17 THE CLERK: Would you state your name, please.

18 MR. BENJAMIN: Medwin Benjamin.

19 THE COURT: Off the record.

20 (Discussion off the record.)

21 THE COURT: Back on the record.

22 Since Mr. Benjamin has just arrived and has
23 not heard what has been said up to this point since
24 his case was called, I am going to ask the Reporter
25 to read to him everything that has transpired this

1 morning in respect of his case.

2 Let the record show that it is now twenty minutes
3 to eleven and that Mr. Benjamin just arrived a few
4 moments ago.

5 Will the Reporter read the record, please.

6 (The record was read.)

7 THE COURT: Indicate in the transcript that it
8 has been read back.

9 MR. BENJAMIN: First, your Honor, let me apologize
10 for being late.

11 I came from New Jersey.

12 Traffic was very bad.

13 I am here.

14 Secondly, your Honor, I beg to differ with Mr.
15 Goldberg that this stipulation of facts that I have
16 is three years old, not one year old. And it has been
17 in Mr. Goldberg's possession for most of those three
18 years.

19 I was ready to try last year when a judge, such
20 as yourself, called me into his chambers and asked
21 Mr. Goldberg to give him a better knowledge of the
22 facts. And, of course, nothing was done.

23 I have no knowledge as to how to file this
24 Petition or whether I should file the Petition.

25 But I have Mr. Goldberg's note of December 22nd.

1 And I have a notice here for him to produce and to
2 make a part of the trial. And I have his admittance
3 that he has the original.

4 And if this should have been filed --

5 THE COURT: Are you talking about the so-called
6 earlier stipulation?

7 MR. BENJAMIN: Yes, sir.

8 If this should have been filed, well, then, may-
9 be it should have. And if it hasn't been filed, I
10 am going to ask the Court to direct Mr. Goldberg to
11 file it.

12 My brother died on Thursday. He was one of my
13 important witnesses, because he was associated with
14 me in all this time. So that is one of my witnesses
15 that is gone.

16 My other witness has been sick for three weeks,
17 my secretary, man secretary, who was with me for three
18 years.

19 Besides that, I have Mr. Roe from General Ser-
20 vices Administration.

21 And besides that, I have the attorney and the
22 receiver for the attorney, who carried my assets,
23 which were over \$8 million worth in 1951.

24 Besides that, there are certain documents that
25 will prove that my business continued on under the

1 guise of the receiver for twelve years thereafter,
2 and there was \$800,000 gotten out of the estate,
3 which eventually became \$400,000 that was turned over
4 to the Government, which was the after run of \$8
5 million worth of items.

6 Now, your Honor, with due respect for the Court,
7 I am ready, willing and able to try this case. And I
8 don't intend to try anything else but the stipulated
9 facts.

10 And I expect to remain moot on all others.

11 THE COURT: And by stipulated facts, you are
12 referring to the earlier unfilled stipulation?

13 MR. BENJAMIN: Yes, sir.

14 You see, Mr. Goldberg, who is a great U. S.
15 attorney, I guess, because he is always doing these
16 things, I have never did this before, but Mr. Goldberg
17 had demanded additional stipulation embodying every-
18 thing word for word in the stipulation, the same as
19 the previous, with the exception of these three facts.

20 Now, I didn't make up these facts. These facts
21 were sent to me after long and drawn-out discussions
22 with Miami. I didn't put a gun up against the fellow's
23 head to give them to me. They had the same type of
24 a fellow they have here who supervises Internal Revenue
25 And I didn't do anything wrong.

1 I just signed what I thought was the proper thing
2 to sign. If that is not the proper thing to sign,
3 then if the Court should overrule me, and I can't
4 go on these three facts, I then have to go into a
5 mountainside full of evidence and a mountainous case
6 that I will never be able to afford, and I might as
7 well lay down and say "Okay, take judgment against
8 me."

9 Now, I don't intend to do that. I intend to
10 fight for my rights. I don't know if I am having my
11 rights stepped on, and I can't tell, your Honor, be-
12 cause I am not legally minded.

13 But if there were three items that they agreed
14 on and I agreed on, why should it be any different
15 now?

16 Why can't I say that I don't want it this way
17 because I want it that way?

18 Why can't we start to bring it up all over again
19 if that is what they are looking for?

20 Now, I don't want to be arbitrary, but, your
21 Honor, if you don't decide, I have to go on these
22 three items, and you must decide I must have -- I --
23 my entire lines of evidence must be gotten together.
24 I don't know what questions they intend to impose upon
25 me. I don't know what they intend to do. They might

1 ask me to produce books that are gone twenty years
2 ago, that they have taken from me.

3 They might ask me to do so many things that I
4 will never be able to do them.

5 THE COURT: May I interrupt you at this moment?

6 MR. BENJAMIN: Yes, sir.

7 THE COURT: Does the Government seek to include
8 in the stipulation which it now wishes the Petitioner
9 to join with them anything beyond what appears in the
10 findings of the companion Court of Claims case?

11 MR. GOLDBERG: Nothing at all, your Honor,
12 nothing at all. We, in fact, have very little the
13 Court can take judicial notice of on its own.

14 The taxpayer, his case has to go on. My case
15 will only be a cross-examination of whatever he puts
16 on.

17 THE COURT: You are willing to stand upon the
18 findings of the Court of Claims as far as any additional
19 material is concerned?

20 MR. GOLDBERG: Right.

21 Those are the facts, yes.

22 THE COURT: Well, there you have it, Mr. Benja-
23 min.

24 MR. BENJAMIN: I didn't understand what he said.

25 THE COURT: The Reporter will read it back.

1 MR. BENJAMIN: Please.

2 (The record was read.)

3 MR. BENJAMIN: Your Honor, this, to my simple
4 knowledge, this Court isn't any part of the Court of
5 Claims. And the Court of Claims was only one small
6 case as far as my situation was concerned. And the
7 amount of money has nothing to do with the Court of
8 Claims.

9 His stipulation is all wrong. He says 1946 I
10 began to get in business, and that wasn't so.

11 My grandfather was in business before me, and
12 I am sixty years old. And my grandfather would have
13 been today one hundred twenty years. So the business
14 was one hundred twenty years old.

15 So this stipulation is wrong.

16 And the Court of Claims is wrong.

17 I am just -- all I expect to argue on and,
18 again, I say to the Court, with all due respect,
19 that I intend to stay moot on any other subject but
20 the three items which I would like to read into the
21 minutes.

22 THE COURT: I have seen those three items.
23 And that so-called earlier and unfiled stipulation
24 describes three issues as being involved. And they
25 were in Paragraph 15 of that earlier stipulation.

1 And no one of those three raised the question whether
2 the alleged loss was deductible at all.

3 That is an issue which the Court on its own
4 could decide, and it could raise on its own, as I
5 pointed out before you came in this morning, and the
6 transcript of which was read to you, that there is
7 a well-established line of cases that a deficiency
8 may be approved on grounds other than that relied
9 upon by the Commissioner, and, indeed, on grounds
10 that are even inconsistent with those relied upon by
11 the Commissioner.

12 This is a well-established procedural rule in
13 this Court.

14 And in the circumstances, if this case were to
15 be heard by me, I would feel perfectly free to examine
16 any of the questions as to whether the loss which you
17 are claiming is a deductible loss wholly apart from
18 the question of when it occurred or what the amount
19 was.

20 This is a matter which the Government intends
21 to present to the Court. It presses it upon the Court.
22 And it insists that there should be a stipulation of
23 facts which embodies the necessary materials to con-
24 sider that issue.

25 It also asserts that the materials necessary to

1 consider that issue are not unduly complex or diffi-
2 cult to find, that they are set forth in the findings
3 of the Court of Claims in the related litigation that
4 has already been completed.

5 And it seems to me to the extent that those facts
6 are true that are in those findings, the Government
7 is entitled to have a stipulation of facts placed be-
8 fore this Court which embodies them.

9 Are you willing to enter into such a stipulation,
10 Mr. Benjamin?

11 MR. BENJAMIN: Your Honor, whatever you said is
12 so, and the Government can prove anything they like.

13 But according to the first stipulation, we
14 agreed. And we agreed that there were three items
15 to be determined before the Court.

16 Now you can have your trial, if you like. And
17 I will sit here for the trial and give the Court all
18 the respect that they are entitled to.

19 But you must give me time to get my witnesses.

20 I must know how to file the stipulation.

21 I have an order. I have a notice to produce
22 that I am going to serve on Mr. Goldberg this morning.
23 He has the original, and just as well that he can
24 file anew his stipulation. He certainly can file
25 the old one.

1 THE COURT: A stipulation, of course, reflects
2 an agreement between the parties. And if at the time
3 the case is called for trial that agreement does not
4 exist, even though there had been a prior meeting of
5 the minds, if at the time the case is called for
6 trial that agreement does not exist, I cannot say that
7 I can force the filing of something to which both
8 sides do not agree at the time it is being filed.

9 Now it may well be that the Petitioner is not
10 ready for trial in the respect of this issue. And it
11 may also be that the Government isn't prepared to
12 place the facts before the Court in the absence of an
13 appropriate stipulation.

14 The rules of Court provide machinery for obtaining
15 stipulations of facts that are not in dispute. Rule
16 31-B-5, was devised precisely for that purpose.

17 And in the present posture of the case, Rule
18 31-B-5 is not available since the time limits have
19 already passed in respect of this calendar. That
20 would not be true if the case were scheduled for trial
21 on a later calendar.

22 I gather that Mr. Benjamin is not ready at this
23 point for trial. And I gather also that in the cir-
24 cumstances the Government is not ready in view of the
25 fact that it does not have the stipulation which it

1 wishes.

2 It would seem to me that the ends of justice
3 would be best served in this case if there were a
4 continuance at this point to enable Mr. Benjamin to
5 assemble whatever materials he wishes to assemble.
6 And also if he does not agree to the stipulation
7 that the Government wishes him to enter into, it
8 would serve the Government's interest so that it could
9 file an appropriate motion under 31-B-5.

10 Do the parties wish to make a joint motion for
11 a continuance at this time?

12 MR. BENJAMIN: I wish to make one statement for
13 the record, your Honor.

14 Though I said I didn't know how to force the
15 Government to file this stipulation and thought that
16 under ordinary circumstances when they did have a
17 signed copy they would file it, the Government knew
18 of this stipulation.

19 And I point to the fact that Mr. Goldberg knew
20 of the stipulation since December 2, 1971, where he
21 wrote me a note and said, "Dear Mr. Benjamin, enclosed
22 find a copy of the Stipulation of Facts in your Tax
23 Court case, Docket 6237-69.

24 "We have the original copy, and your signature
25 has been conformed to the enclosed copy.

1 "If you have any further questions, please be
2 free to contact me at 264-0270."

3 And Mr. Goldberg's signature.

4 Where would a man in the ordinary walks of life
5 come to think that there was some sort of trickery,
6 that if they didn't file, then it became null and void?

7 It doesn't sound possible, your Honor, that
8 things like that could happen. They could happen
9 where there were no rule or justice or 31-Bs and so
10 on.

11 I depended mainly, absolutely and honestly on
12 these three items since 1970 and was always willing
13 and able and ready to go to trial until I came here.

14 THE COURT: Mr. Benjamin, there is involved here
15 a deduction of a very large amount of money based upon
16 an alleged deductible loss.

17 The first thing that would occur to me when I
18 pick up the file of any such case is whether the loss
19 is deductible in any event, regardless of the amount
20 or time.

21 The stipulation that you referred to that you
22 entered into with the Government was not filed. And
23 when the case is called for trial, as it was a week
24 ago today, on this calendar, that stipulation did not
25 represent the then existing agreement of the parties.

1 The Government did not agree then.

2 I do not regard that stipulation as tying the
3 hands of the Court. And, as I pointed out a few
4 moments ago, even if the Government hadn't raised the
5 question, the basic deductability of this loss, the
6 Court would be free to consider it under a long and
7 well-established line of cases. And I don't wish to
8 go over that any further with you.

9 I have sought the suggestions of counsel, which
10 is the procedure to be followed in this litigation
11 at this time.

12 I have suggested that the ends of justice would
13 perhaps be best served if there were a continuance so
14 that Mr. Benjamin could assemble such materials that
15 he wishes or feels that he needs for the conduct of
16 his case.

17 And that would to that extent be to his advantage.

18 And it would be to the advantage of the Govern-
19 ment in formulating an appropriate stipulation to be
20 able to invoke the provisions of Rule 31-B-5 in the
21 event that an appropriate stipulation were not entered
22 into.

23 Can we bring this to a head, gentlemen?

24 Mr. Goldberg.

25 MR. GOLDBERG: I would like to make one statement,

1 your Honor.

2 The case originated in the audit of Mr. Benjamin's
3 1965 income tax returns, on which he claimed a \$2
4 million business loss. He stated this deduction arises
5 from the confiscation of my business property by the
6 General Services Administration pursuant to judgment
7 in the amount of \$957,035.16 plus interest on March 5,
8 1951.

9 The loss represents my basis from the property
10 confiscated.

11 My counsel here claims \$607,655.31.

12 Plus damages have been in litigation and were
13 decided in the United States Court of Claims on July
14 16, 1965, Case Number 538-52.

15 Although successful in several counts of the
16 litigation, the Court's decision afforded me no relief.

17 Certain claims by the GSA offset the amounts
18 awarded. The amount of the loss was determined by the
19 final disposition of the litigation on July 16, 1965.

20 This is the basis that the notice was issued,
21 and this is what I am relying on. This is the only
22 facts that I consider necessary in this case. And
23 they are a reported decision.

24 I am willing to go along with the facts in the
25 case.

1 THE COURT: I am asking you now in order to bring
2 this matter to a head so that the Court can proceed
3 appropriately, I ask you what procedural step you
4 wish to take.

5 MR. GOLDBERG: Procedurally I am willing to go
6 on with the trial.

7 I feel that the --

8 THE COURT: I cannot take judicial notice of the
9 facts in the Court of Claims findings. These are
10 matters that the parties have to stipulate.

11 They can either stipulate to them by agreement,
12 or, failing agreement, you have available to you
13 machinery under this Court's rules for obtaining
14 them.

15 MR. GOLDBERG: Your Honor, I am willing to go
16 along with the initial stipulation deleting Paragraph
17 15.

18 And we can go on with the case today.

19 If that is all Mr. Benjamin is complaining about --

20 THE COURT: Mr. Benjamin doesn't seem to want
21 to delete Paragraph 15.

22 MR. GOLDBERG: This situation is going to arise
23 again.

24 THE COURT: Furthermore, Mr. Goldberg, this
25 doesn't give you all the material you want to place

1 before the Court, as I understood your representations
2 to me in our pre-trial conference.

3 MR. GOLDBERG: Well, the nature of the loss and
4 whether it is deductible or not is certainly established
5 by the facts in the Court of Claims' case in that
6 respect.

7 THE COURT: The Court of Claims' case is before
8 me only as a decision.

9 MR. GOLDBERG: Right.

10 THE COURT: The facts in the Court of Claims'
11 case are not before me. And you would have to place
12 them before me in some appropriate fashion. Judicial
13 notice is not the way to do it. And I would not take
14 judicial notice of it for the purpose of relying upon
15 the facts.

16 I would rely upon the Court of Claims' decision
17 as a decided case. And that is all.

18 MR. GOLDBERG: Well, I think it is up to the
19 taxpayer to make a motion, if he wishes to, under
20 31-B-5, because I will have nothing to stipulate to.
21 I will go along with the statutory notice which dis-
22 allowed the amount in the year only.

23 MR. BENJAMIN: Your Honor, due to the fact of
24 the death of my brother and the confrontation in Court
25 here, which I didn't know which way to go, I am not

1 ready to try. I won't be ready for a week. I haven't
2 notified my witnesses.

3 THE COURT: Are you asking for a continuance?

4 MR. BENJAMIN: I would like, please.

5 THE COURT: For reasons that I have indicated,
6 that I think the interests of justice would be served
7 for both sides, and in order to enable this litigation
8 to be properly presented to this Court, I am going to
9 grant the Petitioner's oral motion for continuance.

10 MR. BENJAMIN: Thank you.

11 THE COURT: And I hope, gentlemen, that the
12 next time this case comes up that there will be an
13 appropriate stipulation of facts to be presented, and
14 that the Government will take, that if it cannot ob-
15 tain the agreement of Petitioner, that it will take
16 advantage of the rules of this Court.

17 MR. BENJAMIN: Your Honor, please, one question.

18 Is there any procedural way that I have to get
19 him to file the stipulation? Is there any way that I
20 can do it, do it legally?

21 THE COURT: You mean the earlier stipulation?

22 MR. BENJAMIN: Yes, sir, even if it isn't any
23 good.

24 THE COURT: When this case is called for trial --

25 MR. BENJAMIN: Yes.

1 THE COURT: You may obtain the filing of that
2 stipulation, and the Court will give it such weight
3 as the Court deems it appropriate.

4 MR. BENJAMIN: Thank you kindly.

5 THE COURT: I would simply state for the record
6 at this point, however, that if the Government repre-
7 sented to me at that time that stipulation does not
8 reflect its agreement at the time it was being filed,
9 I would not give it the weight which you wish to
10 attribute to it, Mr. Benjamin.

11 This is a statement for the record which I am
12 now making.

13 MR. BENJAMIN: Fine.

14 But if Mr. Goldberg didn't know the agreement the
15 two other fellows in Miami made, wouldn't it be proper
16 to bring them up here and know that they did make an
17 agreement with me?

18 THE COURT: This is a matter for argument.

19 MR. BENJAMIN: Thank you. You have been very
20 kind to me, your Honor, and very fair.

21 (Whereupon, at 11:12 o'clock a.m., the case was
22 adjourned as described above.)
23
24
25

UNITED STATES TAX COURT

Certificate of Reporter

Case Docket No.: 6237-69

Case name: MEDWIN BENJAMIN

I, DONALD E. BRAYBOY, associated with
National Reporting Co., Inc., do hereby certify that I
was present during the trial of the above-entitled case
before this Court at its session in New York, New York
and recorded verbatim by means of Stenotype
recording everything spoken during the trial, unless other-
wise directed by the Court, and

That the foregoing pages numbered 1 to 23,
inclusive, are the true, accurate and complete transcript
prepared from the verbatim record made by me on November
20, 1972, in accordance with the applicable provisions of
the current verbatim reporting contract of the Court under
which I have performed my duties as reporter.

12 - 11-72
(Date)

Donald E. Brayboy
(Signature of Reporter)

Minutes of Proceeding before the Tax Court,
~~October 1-October 4, 1973~~



UNITED STATES TAX COURT
 MINUTES OF PROCEEDINGS

Title of case MEDWIN BENJAMIN, et al

Docket No. 6237-69 ✓
5056-73

Date called October 1 and 4, 1973

Place New York, New York

Transcript
 Ordered yes both
 Transcript
 Ordered _____

Date of Trial _____

Place _____

Judge _____

Bruce M. Forrester,

Reporter Patricia Schlairet

Counsel

For Petitioner Medwin Benjamin, on Oct. 1, 1973, only

For Respondent Stanley J. Goldberg,

Proceedings and Action:

Oct 1:

Petr. Oral Motion to Consolidate #s 6237-69 and 5056-73: GRANTED, see order

Filed during Session (and action if necessary)

Oct. 4: at each number.

Resp. Motions to Dismiss for Lack of Prosecution: GRANTED, SEE Order of
Dismissal & Decisions
in each case.

Original briefs: Petitioner _____ Respondent _____

Reply briefs: Petitioner _____ Respondent _____

Time consumed in trial CC & 05 min

Signed _____

Robert G. Groves,

Deputy Clerk.

WITNESSES

For Petitioner

For Respondent

ENR	
DKT-1	✓
CLR	✓

EXHIBITS

PETITIONER'S (Number and describe)

RESPONDENT'S (Letter and describe)

87a
Transcript of Proceeding before the
Tax Court, October 1, 1973

1
2 UNITED STATES TAX COURT

3
4 MEDWIN BENJAMIN

5 Petitioner

6 vs

7 COMMISSIONER OF INTERNAL REVENUE

8 Respondent

Docket No. 6237-69

9
10
11 LOCATION OF HEARING: New York, New York

12
13 DATE: October 1, 1973

14
15 BEFORE: HONORABLE Bruce M. Forrester

16
17 APPEARANCES:

18 Stanley J. Goldberg, Esq., for Respondent.
19
20
21
22
23
24
25

88a
Transcript of Proceeding before the
Tax Court, October 1, 1973

2

P R O C E E D I N G S

THE CLERK: Docket No. 6237-69, Medwin Benjamin.

Your Honor, this is the case on which the
gentleman called me stating he was delayed in traffic.

THE COURT: And no one has answered.

Very well, if you'll call again at the close of
the call of the others.

(Whereupon, this case was postponed
until the end of the calendar call
as indicated.)

THE CLERK: Docket No. 6237-69, Medwin Benjamin.

(Pause.)

Your appearances please, gentlemen?

MR. BENJAMIN: Medwin Benjamin for himself.

MR. GOLDBERG: Stanley J. Goldberg for the
Respondent.

Your Honor, the Respondent is ready for trial in
this case.

MR. BENJAMIN: Your Honor, the Petitioner would
like to take this case and join it with a previous case
that is before the Court.

All of the facts in the previous case and this
case are the exact same items with the exception of the
facts in the previous case goes from '67 to '68 and this
case is '69 and '70. Am I right?

89a
Transcript of Proceeding before the
Tax Court, October 1, 1973

1 MR. GOLDBERG: Your Honor, there is a recent case
2 that was petitioned and answered. I don't have the present
3 docket number, but it's a '73 case which is related to the
4 present case.

5 And I think Mr. Benjamin would like to make a
6 motion to consolidate that case with this.

7 I have no objection.

8 The issue in this case is whether Petitioner is
9 entitled to an operating loss in '65. The present docket,
10 I believe, has the year '65, '6, '7 and '8. And the other
11 case that was recently petitioned was either '68 and '69 or
12 '69 and '70.

13 But the latter two years where this particular
14 case leaves off. But those were the carry forward years,
15 in other words.

16 MR. BENJAMIN: They were the carry forward years
17 from '65 to '70.

18 THE COURT: Has Mr. Goldberg stated it accurately
19 what it is you want to do?

20 MR. BENJAMIN: Yes. Yes.

21 MR. GOLDBERG: I don't have that present docket
22 with me now, but I can get that for you.

23 MR. BENJAMIN: I have it with me, I think.

24 (Pause.)

25 Is that the same one?

1 (Mumbling.)

2 (Pause.)

3 THE COURT: All right. If you're agreed on that,
4 the cases can be consolidated for trial, briefing and
5 opinion when you get that folder, Mr. Goldberg, so that
6 you'll be able to accurately describe it.

7 MR. GOLDBERG: Yes.

8 THE COURT: Now, do both parties want trial?

9 MR. BENJAMIN: Yes.

10 Your Honor, the sum and substance of this case
11 and the arguments that I've been having with the government's
12 attorney is the stipulation of facts that were agreed
13 upon in this case in Miami.

14 The government attorney keeps forwarding the
15 stipulations of facts and the stipulations that he forwards
16 are true to some extent. But he just refuses to -- agree
17 to the signed stipulation of three important facts that
18 were done in Miami.

19 They seem to disregard Miami, Florida as a -- as
20 not a part of the United States. And I just can't understand
21 it.

22 My theory and my thought is that if a stipulation
23 of facts was signed in Miami by U. S. government attorneys
24 and I'm appearing in New York on the same case, that
25 stipulation should be.

1 Since the time that this case was called and
2 since these arguments, my two important witnesses have died.
3 My brother died and the gentleman that was my secretary for
4 a number of years through all this holocaust died.

5 It leaves me with practically no witnesses for
6 the case.

7 However, I don't think I'll need any witnesses
8 if the stipulation that was signed in Miami were moved along
9 with this case in New York. And I think that the trial
10 would be very short and I could take care of it myself.
11 If you will agree or you will advise or you will suggest
12 to the U. S. attorney that these -- that this -- these
13 facts that were signed in Miami should stand in this case
14 in New York.

15 THE COURT: What do you say to that, Mr. Goldberg?

16 MR. GOLDBERG: Your Honor, the case was heard
17 before Judge Atkins in Miami on June 7, 1971.

18 A stipulation was entered into by an attorney
19 representing the Respondent in his Miami office and Mr.
20 Benjamin.

21 Petitioner at that time --

22 MR. BENJAMIN: May I stop him if he's not true,
23 Your Honor. I mean, if he's -- he's just forgetting a
24 few things?

25 THE COURT: You'll have to wait until he finishes

1 and then straighten him out.

2 MR. BENJAMIN: I see. Okay.

3 MR. GOLDBERG: According to the transcript of that
4 proceeding which I have in my file, the government was going
5 to move to dismiss for lack of prosecution.

6 At that time, Mr. Benjamin moved to have the case
7 venue changed -- the case set for trial in New York inasmuch
8 as he was going to have -- get an attorney by the name of
9 Mr. Buchsbaum.

10 At that time -- Mr. Buchsbaum -- B U C H S B A U M.

11 He said he had engaged Mr. Buchsbaum and wanted
12 Mr. Buchsbaum to look over this stipulation of fact.

13 Judge Atkins refused to have the stipulation filed.
14 And the case was continued. And the new place of trial
15 was New York.

16 The case then came before Judge Quealy here in
17 New York City. I represented the Respondent at that
18 particular time. And we had the same type of problem. I
19 wrote Mr. Benjamin when I received my file to come in for
20 a stipulation of fact conference. And Mr. Benjamin said he
21 had previously stipulated to something in Miami. And I
22 said that I would not be bound by that stipulation since
23 time has changed and the events have changed in this case
24 and a stipulation was not filed.

25 Judge Quealy continued the case.

1 This case came before Judge Raum in November of
2 1972, and at that time Judge Raum advised the Petitioner
3 that he would not require the government to file the
4 stipulation that was signed by the parties but unfiled in
5 Miami --

6 MR. BENJAMIN: If Your Honor please, I need a
7 pencil and a piece of paper. I can't remember all these --

8 MR. GOLDBERG: And again I sent Mr..Benjamin a
9 proposed stipulation of facts last month with the exhibits
10 attached.

11 Judge Raum was quite emphatic and we did have
12 extensive discussions with him in chambers regarding this
13 problem. And he said the stipulation was not filed in
14 Miami. And he would not require the government to file
15 the stipulation in this case.

16 (Pause.)

17 THE COURT: Yes, Mr. Benjamin?

18 MR. BENJAMIN: Your Honor, if I ever saw a bunch
19 of double talk, this is it.

20 I just can't understand it.

21 I never went to Court in Miami. The stipulation
22 that I signed in Miami was done mostly by mail from Miami
23 to New York.

24 And none of the Judges have ever agreed that the
25 stipulation that I had would not be heard.

1 In my last appearance in this Court, -- I asked
2 the Court to consider the stipulation and they told me that
3 it wasn't filed.

4 I asked the Court to ask Mr. Goldberg to file the
5 stipulation, and they said, when it did come to trial again
6 that Mr. Goldberg would file the stipulation. And it so
7 states in the minutes here.

8 (Pause.)

9 Now, I don't know of any facts that could have
10 changed the stipulation when the stipulation refers to
11 1951, '52 and 1953. What are the facts that might have
12 changed between 1970 and 1973 that has to do with '51 or
13 '53?

14 I think that Mr. Goldberg might have an idea that
15 I obtained this stipulation possibly by threats or
16 coercion or by bribery. I just don't know why he won't
17 adhere to the stipulation of facts.

18 He sends me a stipulation of facts that includes
19 everything that says the truth and leaves out the three
20 most important ones that I signed.

21 I could have tried this case in Miami, if I didn't
22 have this stipulation of facts that I needed.

23 And the stipulation so states in no uncertain
24 terms there are three things to be tried before this Court.
25 And I intend to try them three things. And if the stipulation

1 that's signed in Miami isn't any good in New York, well
2 then it just isn't any good.

3 If he's trying to stop me in any way from filing
4 it, then that's another thing. But Mr. Goldberg had this
5 stipulation in 1970 and with his own handwriting sent me
6 a copy of it in 1972 explaining to me that this was the
7 stipulation that was filed in Miami and this is the item
8 that we're going to go by.

9 After that time, he decided to change his mind
10 and he didn't like that stipulation. That he don't like
11 the things that other people do. And what he does is the
12 proper thing.

13 THE COURT: Mr. Benjamin, a stipulation is an
14 ambulatory sort of thing and until it's filed either party
15 has the right to change his mind.

16 The Respondent certainly does in this case.

17 This stipulation which was signed in Miami has
18 never been filed. This case has never been tried.

19 I will not require either party to file a
20 stipulation in this case. Now, we're going to go forward
21 from there.

22 Are we ready to go to trial in this case?

23 MR. GOLDBERG: Your honor, that is fine with me.

24 MR. BENJAMIN: Your Honor, please, if you were
25 talking to me. Your Honor, please, the Judge -- the previous

Transcript of Proceeding before the
Tax Court, October 1, 1973

1 Judge last year said that I could file the stipulation when
2 I went to Court this year.

3 (Pause.)

4 Now, the stipulation was duly signed. I don't
5 know the process of the Court and I don't know whether you're
6 supposed to file it or whether you're not supposed to file
7 it. But this was signed and this was agreed upon.

8 MR. GOLDBERG: Your Honor?

9 THE COURT: But apparently it's not agreed upon
10 now.

11 MR. BENJAMIN: Have they the right to change a
12 stipulation?

13 THE COURT: Yes sir. And so do you.

14 (Pause.)

15 Now, without the stipulation, does that leave
16 any facts stipulated, gentlemen?

17 MR. GOLDBERG: I sent Mr. Benjamin a stipulation
18 of facts, Your Honor, which I think puts forward all the
19 facts in the case that can be reasonably stipulated.

20 And it was a quite lengthy one, with exhibits
21 attached, and I see no reason why Mr. Benjamin won't sign
22 that stipulation.

23 (Pause.)

24 THE COURT: Are you willing to sign it, Mr.
25 Benjamin?

97a
Transcript of Proceeding before the
Tax Court, October 1, 1973

11

1 MR. BENJAMIN: If he adds the three items to it
2 that belong -- that came around the original stipulation.

3 THE COURT: Will you add the three items, Mr.
4 Goldberg?

5 MR. GOLDBERG: No, I won't, Your Honor.

6 THE COURT: He won't. Will you sign it without
7 them?

8 MR. BENJAMIN: No sir.

9 THE COURT: How long will it take to try the
10 case with no stipulation, gentlemen?

11 MR. BENJAMIN: Your Honor, if they don't adhere
12 to their original agreement, I have no way of trying this
13 case without a voluminous amount of papers, files -- this
14 goes through -- back through 1951 and '52 -- and it might
15 very well take months.

16 And I don't have the money to do it with.

17 MR. GOLDBERG: Your Honor?

18 THE COURT: Yes sir?

19 MR. GOLDBERG: This -- when I first obtained the
20 case, it was transferred to me from Miami, it was assigned
21 to me in 1971 -- Mr. Benjamin was fully aware that I was
22 proposing a new stipulation of facts and that what his
23 burden of proof would be.

24 The gentlemen supposedly that are involved -- we
25 had another government agency -- in our -- in this building,

1 they could have been subpoenaed. The records -- a year
2 and a half ago.

3 (Pause.)

4 The --

5 THE COURT: This case is getting quite old, Mr.
6 Benjamin. I think we'd better go to trial.

7 We've had an awful lot of pretrial machinations.
8 I think I'd better give you a setting and we'll go to
9 trial.

10 Mr. Goldberg, how long do you think it will take
11 to try the case?

12 MR. GOLDBERG: Oh well. I would say -- if the
13 stipulation were signed that I sent him -- perhaps no more
14 than a day, a day and a half.

15 THE COURT: Well, now in this case the entire
16 burden of proof is on the Petitioner.

17 MR. GOLDBERG: Right.

18 (Pause.)

19 MR. BENJAMIN: In other words, Your Honor, are
20 you ruling that the former petition that was signed --

21 THE COURT: Yes, sir. A stipulation is ambulatory.
22 Until it is filed with the Court, either party can withdraw
23 from it.

24 You can't force anybody to sign a stipulation.
25 This has never been filed. It's never been a Court docu-

1 ment.

2 MR. BENJAMIN: Your Honor, you just said you can't
3 force anybody to sign the stipulation.

4 THE COURT: That's right.

5 MR. BENJAMIN: I didn't force them to sign it.

6 THE COURT: To sign and file.

7 MR. BENJAMIN: The -- I have a letter from the
8 United States Attorney's office in Miami saying that they
9 didn't file it because they wanted to keep it for future
10 reference.

11 Does that mean that it isn't any good? Or they
12 didn't file it because -- I have a letter here. It says,
13 "In response to your letter of November 20th, our records
14 reflect that the executed -- executed stipulation of the
15 facts were not filed with the Court, but was returned for
16 future use."

17 What use have they got with it?

18 THE COURT: What is it?

19 MR. BENJAMIN: You should contact the New York
20 regional counsel office to which your case was assigned
21 in connection with your request.

22 THE COURT: Let me see the letter, please?

23 MR. BENJAMIN: Yes sir.

24 MR. GOLDBERG: Has Your Honor had a chance to
25 look over Judge Atkins' -- ?

1 MR. BENJAMIN: If Your Honor please --

2 MR. GOLDBERG: -- Judge Raum's -- ?

3 MR. BENJAMIN: -- he's all out of -- .

4 (Pause.)

5 THE COURT: Well, there are many uses to which
6 a signed stipulation could be put. It could be used for
7 reference. It could be used for many things.

8 Until it's filed, Mr. Benjamin, --

9 MR. BENJAMIN: I don't know how --.

10 THE COURT: -- it is not a Court document.

11 MR. BENJAMIN: Your Honor, I don't know how to
12 file it. And the Judge before you --

13 THE COURT: You can't file it. It takes both
14 parties to file it.

15 The stipulation has to be an agreed thing.

16 MR. BENJAMIN: The Judge before you said that the
17 stipulation could be filed at the time of the -- item that's
18 coming up. I have it here. I can't -- I guess I'm too
19 nervous.

20 I can't read it, but it's in here, Your Honor.

21 MR. GOLDBERG: Judge Raum, in fact, would not
22 accept the stipulation. He suggested the government file
23 a Rule 35 -- 31B5 motion to compel Mr. Benjamin to stipulate
24 our new proposed stipulation at that time.

25 (Pause.)

1 MR. BENJAMIN: It's -- well, Your Honor, I -- I --
2 really must go anew into the case if they won't accept the
3 stipulation they have.

4 And it would at least take me three months to
5 prepare it. It's a voluminous case. It's a large case with
6 large figures that has to do with over eight million
7 dollars worth of inventory that were destroyed by the
8 government and their receivers.

9 The -- the proof of it would be just colossal.

10 MR. GOLDBERG: Your Honor, this is not a surprise
11 for Mr. Benjamin. This was explained to him several times
12 before in the last two years.

13 (Pause.)

14 MR. BENJAMIN: I'm not looking for an edge of
15 any kind.

16 I'm just looking for somebody to say and do what
17 they agreed.

18 MR. GOLDBERG: Your Honor, I think at that time
19 when this case came in Miami we were duped by Mr. Benjamin
20 to believing he had an attorney here in New York who was
21 going to review the stipulation at that time.

22 I don't believe -- I've never been contacted by
23 any attorney Mr. Benjamin has in New York.

24 (Pause.)
25

102a
Transcript of Proceedings before the
Tax Court, October 1, 1973

16

1 In fact, Judge Atkins refused to accept the
2 stipulation.

3 MR. BENJAMIN: That's so, Your Honor. Judge
4 Atkins said it could be entered.

5 MR. GOLDBERG: Did you have the transcript of
6 Judge Atkins?

7 MR. BENJAMIN: I'm looking for it now. You
8 make me so nervous.

9 MR. GOLDBERG: Well, I have it. I'm sorry.

10 MR. BENJAMIN: Who's Judge Atkins, the first
11 Judge or the second?

12 MR. GOLDBERG: That was the one in Miami when
13 you appeared in Miami.

14 MR. BENJAMIN: I never appeared in Miami.

15 MR. GOLDBERG: Then your name got on the record
16 somehow.

17 MR. BENJAMIN: Well, but I was never there.
18 Did you see me there?

19 MR. GOLDBERG: The Court has an appearance in
20 Miami on June 7th, '71, Mr. Benjamin pro se. And our
21 office of the Chief Counsel was represented by Andrew
22 Weinstein of our Miami office.

23 MR. BENJAMIN: Maybe I was. I don't know. Let
24 me see that.

25 MR. GOLDBERG: I think you better look at this

1 transfer, Mr. Benjamin.

2 (Pause.)

3 MR. BENJAMIN: Yes.

4 THE COURT: I believe you were in Miami on June 7,
5 '71, Mr. Benjamin.

6 MR. BENJAMIN: Yes. Yes, I see that.

7 (Pause.)

8 THE COURT: Gentlemen, I think we'd better go
9 to trial. This has been kicking around for years and years
10 and things have to come to an end some time.

11 (Pause.)

12 When -- what day do you want to go to trial,
13 gentlemen?

14 MR. BENJAMIN: I need three months.

15 THE COURT: Well, we're going to go to trial at
16 this session, Mr. Benjamin.

17 MR. BENJAMIN: I don't know what your session is.

18 THE COURT: The session is set to start on
19 October 1 and to continue until the cases on this calendar
20 have been disposed of.

21 I'm probably going to give you a starting date
22 of Thursday or Friday this week.

23 MR. BENJAMIN: It is absolutely impossible, Your
24 Honor.

25 THE COURT: Well, it's -- but this has been going

1 on ever since -- what's the first year -- what's the date of
2 the statutory notice in this case?

3 MR. GOLDBERG: The date of the statutory notice
4 was '69. September 26, '69.

5 THE COURT: All things have to come to an end --

6 MR. BENJAMIN: Yes sir.

7 THE COURT: -- and we have to try this case with
8 no stipulation, bear in mind the burden of proof's on you.

9 We'll start out and you'll just do the best you
10 can.

11 MR. BENJAMIN: Your Honor, I intend to go through
12 with this case if I can. But to be prepared properly I
13 must have three months.

14 I'm prepared to --

15 THE COURT: Mr. Benjamin, you've had about three
16 years.

17 MR. BENJAMIN: And I'm prepared to go to trial
18 tomorrow morning on the three facts that we're stipulated
19 to, but you have seen fit to disregard the stipulation that
20 I've had signed.

21 So, now --

22 THE COURT: Sir, it is not a stipulation in that
23 sense. It has never been filed in this Court.

24 (Pause.)

25 MR. BENJAMIN: Are they the rules of the Court that

1 should a stipulation not been filed it is void?

2 THE COURT: It's not a stipulation until it's been
3 filed.

4 MR. BENJAMIN: It's not a stipulation.

5 Well, of course my opinion is that it is. I would
6 like to have three months to try my -- to assemble my facts.
7 And it's large enough to take three months.

8 However, if you make me come into Court on
9 Thursday and not giving me the proper amount of time, I've
10 no other alternative than to lose the case by the fact that
11 I wasn't prepared.

12 Now, you're the first Judge that's said that the
13 facts that were agreed upon by former -- by U. S. attorneys --

14 THE COURT: They haven't been agreed upon because
15 it's never been filed.

16 MR. BENJAMIN: Your Honor, I agree with what you
17 say because you know the law and I don't.

18 I only know that they were agreed upon because
19 they were signed. They were signed by -- and agreed upon
20 by people that signed.

21 Now, maybe they were signing them for themselves.
22 I don't know. But I do need three months to prepare. If
23 you want to take me and put me up against you for this
24 Thursday when I'm not prepared, I must tell you now that
25 the government is taking advantage of me because I can't

1 be prepared. And they have nothing other to do than to win.

2 < If they have nothing other to do than to win, I --
3 intend to remain mute on all facts except the three that they
4 decided to try me on.

5 You must give me the time that I need to prepare,
6 Your Honor.

7 (Pause.)

8 THE COURT: How long do you think the trial will
9 take, Mr. Goldberg?

10 MR. GOLDBERG: Well, -- not knowing what Mr.
11 Benjamin has in mind, I would say a day, a day and a half.

12 (Pause.)

13 THE COURT: Very well. I'll give you the setting
14 at the close of the call of all of the cases here this
15 morning.

16 Call the next case please, Mr. Groves.

17 (Whereupon, this proceeding was
18 concluded as stated above.)
19
20
21
22
23
24
25

UNITED STATES TAX COURT
WASHINGTON

MEDWIN BENJAMIN, et al Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 6237-69
5056-73

ORDER CONSOLIDATING CASES

When docket number 6237-69 was called for trial at New York, New York, on October 1, 1973, pursuant to notice dated June 25, 1973, petitioner Medwin Benjamin orally moved that the cases at docket numbers 6237-69 and 5056-73 be consolidated. Counsel for the respondent did not object to the consolidation of the cases. The cases as consolidated were then set for trial with both petitioner and counsel for respondent present at the time. After due consideration, it is

ORDERED, that petitioner's oral motion for consolidation is granted in that the cases at docket numbers 6237-69 and 5056-73 are consolidated for trial, briefing and opinion; and it is further

ORDERED, that the above-consolidated cases are set for trial commencing at 10:00 A. M., on October 4, 1973, in Tax Court Courtroom Room 206, Federal Building, 26 Federal Plaza, New York, New York.

(signed) Bruce M. Forrester

Judge

Dated: New York, New York,
October 1, 1973,

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\ www.mhfi.com-108a
Motion to Dismiss for Lack of Prosecution
Docket No. 6237-69

UNITED STATES TAX COURT

MEDWIN BENJAMIN,

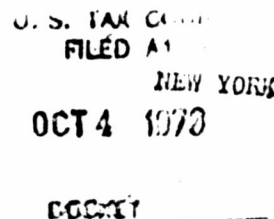
Petitioner,)

v.)

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

Docket No. 6237-69



MOTION TO DISMISS FOR LACK OF PROSECUTION

Mounted for this
B
THE RESPONDENT MOVES that the Court dismiss the above-entitled case for lack of prosecution; and find in its order that there are due from the petitioner deficiencies in income taxes and additions to the tax, as set forth in the statutory notices of deficiency dated September 22, 1969 and September 26, 1969, upon which notices the above-entitled case is based, as follows:

Taxable Year	Deficiency		
	Income Tax	Additions to the Tax, Code of 1954	
		\$6651(a)	\$6653(a)
1965	\$ 3,134.38	\$ 313.43	\$ 156.72
1966	1,130.00	169.49	-
1967	26,117.18	2,611.72	1,326.98
1968	206,625.54	30,993.83	10,353.03

IN SUPPORT THEREOF, the respondent respectfully shows unto the Court:

1. This case was regularly called for trial at the Trial Session of this Court on October 4, 1973, at New York City, New York. Counsel for the respondent appeared and announced ready for trial. No appearance was made by or on behalf of the petitioner.

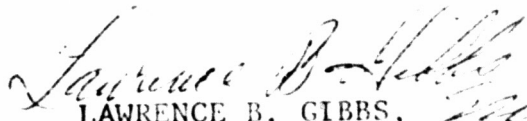
- 109a -
Motion to Dismiss for Lack of Prosecution
Docket No. 6237-69

2. All the material allegations of fact set forth in the petition in support of the assignments of error have been denied by respondent in his answer. No issues have been raised upon which the burden of proof is upon respondent, and the respondent has not conceded any error assigned in the petition.

3. No evidence has been adduced in support of the assignments of error raised in the petition.

4. A copy of the notice of deficiency for the taxable years 1965 and 1966 and a copy of the notice of deficiency for the taxable years 1967 and 1968, upon which the case is based are attached as Exhibits A and B, respectively.

WHEREFORE, it is prayed that this motion be granted.


LAWRENCE B. GIBBS,
Acting Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
STANLEY J. GOLDBERG,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

JHG 10/4/73

Exhibit "A" to Motion to Dismiss for Lack of Prosecution
Docket No. 6237-69

SEP 28 1969

Ap:Mia:154:REM

Mr. Edwin Benjamin
5005 Collins Avenue
Miami Beach, Florida 33140

Dear Mr. Benjamin:

Taxable Year Ended:	Deficiency: Tax	Additions to Tax 1959 Code	
		Section 6651(a)	Section 6653(a)
Dec. 31, 1965	\$3,130.33	\$313.43	\$156.72
Dec. 31, 1966	1,130.00	169.49	-

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability for the above-noted taxable years discloses deficiencies in the amounts shown above. Assessment of the deficiencies has been made under the provisions of the internal revenue laws applicable to jeopardy assessments. The attached statement shows the computation of the deficiencies.

If you decide to contest this determination, you must do so by filing a petition within 90 days (150 days if you are outside the States of the Union and the District of Columbia) from the date of this letter with the Tax Court of the United States in accordance with its rules. A copy of the rules of the Court may be obtained by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D. C. 20044.

Sincerely yours,

Randolph W. Trower

Commissioner

By *A. V. Wootton*

A. V. Wootton

Assistant Chief

Appellate Branch Office

Enclosure:
Statement

EXHIBIT A

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111a
Exhibit "A" to Motion to Dismiss for Lack of Prosecution, Docket No. 6237-69
STATUTORY NOTICE STATEMENT

Modèle, Benjamin
5005 Collins Avenue
Miami Beach, Florida 33140

Taxpayer

DEFICIENCY

Additions to Tax - 1956 Code

	Tax	Section 6651(a)	Section 6652(a)
1955 Tax	\$2,124.00	\$312.43	\$156.22
1956 Tax	1,120.00	160.49	
Total	\$3,244.00	\$472.92	\$156.22

"Statement of this deficiency has been made against you under the provisions of Internal Revenue Law applicable to jeopardy assessments."

"In this determination, careful consideration has been given to the deficiency letter dated August 21, 1966, to your protest dated September 9, 1966, to the District Conference Report dated November 13, 1966 and to the statements made at the conferences held on February 11 and May 20, 1967.

"Since your 1955 and 1956 returns for the years 1965 and 1966 were not filed with the District Office, and you have not shown that such failure to comply with the provisions of the Internal Revenue Code, 10 percent of the 1955 tax and 10 percent of the 1956 tax as added by section 6651 of the 1954 Internal Revenue Code.

Stanley Mayer, Esq., Tax
Paul, Lantz and Bailey
20 East Southern Lane 1146
Miami, Florida 33121

James A. Sullivan, Esq.
Paulina S. Brown
Fortinet Building 210
110 S.W. 2nd Avenue
Miami, Florida 33131

It is determined that part of the underpayment of tax for the year 1965 is due to negligence or intentional disregard of rules and regulations. Consequently, the 5 percent addition to the tax provided by Section 6653(a) is assessed for that year.

INDIVIDUAL INCOME 17 X

12-31-65		12-31-66	
(1) 100,000.00	(1,000,000.00)	(1,000,000.00)	
(2) 100,000.00	1,000.00	-	
(3) 100,000.00	2,000,000.00	-	
(4) 100,000.00	-	1,000.00	
(5) 100,000.00	(100,000.00)	(100,000.00)	
(6) 100,000.00	12,845.49	6,000.00	
(7) 100,000.00	3,134.38	1,120.00	
(8) 100,000.00	-	-	
(9) 100,000.00	-	-	
(10) 100,000.00	259.20	605.90	
(11) 100,000.00	3,393.58	1,535.90	
(12) 100,000.00	-	-	
(13) 100,000.00	3,393.58	1,535.90	
(14) 100,000.00	259.20	605.90	
(15) 100,000.00	3,134.38	1,120.00	
(16) 100,000.00	313.43	169.46	
(17) 100,000.00	156.72	-	

John P. ...

(b) It is determined that the deduction of \$1,375.00 of paid for rent expense on business property is not allowed because it has not been established that the amount was paid for the purpose of deducting or that the amount represents an ordinary and necessary business expense. Therefore, your taxable income is increased in the amount of \$1,375.00 for the year 1965.

(c) The deduction of \$2,000,000.00 claimed in your 1965 income tax return as losses on business property arising from the alleged confiscation of your business property by the Federal Bureau of Investigation is not allowed because you have not established the amount of the alleged losses, and the alleged losses were not sustained in the year 1965. Therefore, taxable income for the year 1965 is increased \$2,000,000.00.

(d) It is determined that you did not sustain a net operating loss in the taxable year 1965 within the meaning of section 172 of the Internal Revenue Code. Consequently, there is no net operating loss carryover to the year 1966, and there is increased \$2,000,000.00.

(e) A 20% bonus standard deduction of \$500.00 is allowable for each of the years 1965 and 1966 in accordance with the provisions of section 141 of the 1954 Internal Revenue Code.



District Director
Internal Revenue Service

Date SEP 22 1969
NOTARY PUBLIC
43

Mr. Edwin Benjamin
5005 Collins Avenue
Miami Beach, Florida 33140

Sir:

Taxable Year (See Schedule Attached)
Ended: Deficiency:

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability discloses a deficiency or deficiencies in the amounts and for the taxable years shown above. Assessment of the deficiency or deficiencies has been made under the provisions of the internal revenue laws applicable to your tax assessments. The enclosed statement shows the computation of the deficiency or deficiencies.

If you decide to contest this determination, you must do so by filing a petition within 90 days (150 days if you are outside the States of the Union and the District of Columbia) from the date of this letter with the Tax Court of the United States in accordance with its rules. A copy of the rules of the Court may be obtained by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D. C. 20044.

Very truly yours,

Randolph W. Threwer
Commissioner

By A. J. O'DONNELL, JR.
District Director

Enclosure
Statement

EXHIBIT B

116a

Exhibit "B" to Motion to Dismiss for Lack of Prosecution
Docket No. 6237-69

Mr. Edwin Benjamin
Miami Beach, Florida

Schedule

Taxable Year Ended	Deficiency	Delinquency Penalty Section 6651(a)	Negligence Penalty Section 6653(a)
December 31, 1967	\$ 26,117.18	\$ 2,611.72	\$ 1,326.98
December 31, 1968	206,625.54	30,993.83	10,353.03

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE
STATUTORY NOTICE STATEMENT

SYMBOLS

436

Mr. Madain Benjamin
5005 Collins Avenue
Miami Beach, Florida 33140

KIND OF TAX

Income

TAXABLE YEAR ENDED	Deficiency	Additions to the Tax (IRC of 1954)	
		Delinquency Penalty Section 6651(a)	Negligence Penalty Section 6653(a)
December 31, 1967	\$26,117.18	\$ 2,611.72	\$ 1,326.83
December 31, 1968	206,625.54	30,993.83	10,353.03
Total	\$232,742.72	\$33,605.55	\$11,680.01

Since your income tax returns for the taxable years 1967 and 1968 were not filed within the time prescribed by law and you have not shown that such failure to timely file your returns was due to reasonable cause, 10 per centum of the tax is added for the year 1967 and 15 per centum of the tax is added for the year 1968 as provided by Section 6651(a) of the Internal Revenue Code of 1954.

It is determined that part of the underpayment of tax for the taxable years 1967 and 1968, is due to negligence or intentional disregard of rules and regulations. Consequently, the 5 per centum addition to the tax provided by Section 6653(a) of the Internal Revenue Code of 1954 is asserted for each of those years.

Mr. James R. Kaufman
Certified Public Accountant
150 Southeast Second Avenue
Miami, Florida 33131

☒ Copy to Authorized Representative

INDIVIDUAL INCOME TAX

A

		TAXABLE YEARS ENDED	
		12-31-67	12-31-68
Benjamin			
GROSS INCOME		\$	\$
LESS: EXEMPTED INCOME		(1,200.00)	(2,217.00)
INCREASE (DECREASE) IN INCOME			
(a) Net Operating Loss Deduction		57,389.00	298,031.00
(b) Standard Deduction		(500.00)	(500.00)
(A) TAXABLE INCOME AS ADJUSTED		\$ 55,689.00	\$ 295,314.00
TAX BASED ON:			
HEAD OF HOUSEHOLD <input type="checkbox"/>		\$	\$
SEPARATE RETURN <input checked="" type="checkbox"/>			
JOINT RETURN <input type="checkbox"/>			
		26,117.18	192,209.80
ADD: SELF-EMPLOYMENT TAX		422.40	435.00
EXCESS Tax Surcharge		\$	\$ 14,415.74
LESS: TAX CREDITS			
TAX LIABILITY AS CORRECTED		\$ 26,539.58	\$ 207,060.54
LIABILITY PREVIOUSLY ASSESSED			
592227601062-8		422.40	
592117425005-9			435.00
DEFERRED		\$ 26,117.18	\$ 206,625.54
Section 6651(a)		2,611.72	10,991.83
Section 6653(a)		1,326.98	10,353.03

TAX COMPUTATION

Mr. Edwin Benjamin

Statement -3-

(a) It is determined that you did not sustain a net operating loss in the taxable year 1965. Consequently, there is no net operating loss carryover to the taxable years 1967 and 1968. Therefore, your taxable income is increased \$57,389.00 for the year 1967 and \$298,031.00 for the year 1968.

<u>Year</u>	<u>Per Return</u>	<u>As Determined</u>	<u>Adjustment</u>
1967	\$57,389.00	-0-	\$ 57,389.00
1968	298,031.00	-0-	298,031.00
Total	<u>\$355,420.00</u>	<u>-0-</u>	<u>\$355,420.00</u>

(b) It is determined that you are allowed the standard deduction of \$500.00 under Section 141 of the Internal Revenue Code for each of the taxable years 1967 and 1968. Accordingly, your taxable income is decreased \$500.00 for the year 1967 and \$500.00 for the year 1968.

120a
Motion to Dismiss for Lack of Prosecution
Docket No. 5056-73
UNITED STATES TAX COURT

U. S. TAX COURT FILED AT NEW YORK OCT 4 1973 DOCKET

MEDWIN BENJAMIN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.)

Docket No. 5056-73

MOTION TO DISMISS FOR LACK OF PROSECUTION

THE RESPONDENT MOVES that the Court dismiss the above-entitled case for lack of prosecution; and find in its order that there are due from the petitioner deficiencies in income taxes for the taxable years 1969 and 1970 in the amounts of \$99,494.54 and \$3,592.63, respectively, as set forth in the statutory notice of deficiency dated April 24, 1973, upon which notice the above-entitled case is based.

IN SUPPORT THEREOF, the respondent respectfully shows unto the Court:

1. This case was regularly called for trial at the Trial Session of this Court on October 4, 1973, at New York City, New York. Counsel for the respondent appeared and announced ready for trial. No appearance was made by or on behalf of the petitioner.

2. All the material allegations of fact set forth in the petition in support of the assignments of error have

121a

Motion to Dismiss for Lack of Prosecution, Docket No. 5056-73
been denied by respondent in his answer. No issues have
been raised upon which the burden of proof is upon respondent,
and the respondent has not conceded any error assigned in the
petition.

3. No evidence has been adduced in support of the assignments of error raised in the petition.

4. A copy of the notice of deficiency upon which the case is based is attached hereto as Exhibit A.

WHEREFORE, it is prayed that this motion be granted.

[(Sgd)] LAWRENCE B. GIBBS - EHT

LAWRENCE B. GIBBS,
Acting Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
STANLEY J. GOLDBERG,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

Department of the Treasury
P.O. Box 3100, Church St. Sta., New York, N.Y. 10108

District Director
Internal Revenue Service

Date: APR 24 1973

In reply refer to:

Ref. 24-3100



Mr. Martin Benjamin
1333 Palisade Avenue
Fort Lee, New Jersey 07024

Page 511:

Tax Year Ended:

12/31/69
12/31/70

Deficiency

\$99,036.34
3,582.00

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Sincerely yours,
Johnnie M. Walters
Commissioner
By

Enclosures:
Waiver
Statement
Envelope

EXHIBIT A

Walters

District Director

Statement

Herwin Benjamin
1500 Palisade Avenue
Fort Lee, New Jersey 07024

Tax Liability for the Taxable Years Ended

December 31, 1969
December 31, 1970

Income Tax

<u>Taxable Years Ended</u>	<u>Deficiency</u>
December 31, 1969	\$99,494.54
December 31, 1970	3,592.65

The stated deficiencies are based on adjustments and explanations set forth in detail below.

A copy of this letter and statement is being mailed to your representatives, James R. Kaufman, CPA, 150 N.E. Second Avenue, 14th, Florida 33131 and Stanley Arthur Kelley, Esq. 341 Pan American Bank Building, Miami, Florida 33131 in accordance with instructions contained in the power of attorney executed by you.

Adjustments to Income
and
Computation of Tax

	1969	1970
Taxable income (loss) disclosed by return	\$ (1,200.00)	(625.00)
Increase (decrease) in income:		
(a) Miscellaneous deductions -		
Net operating loss carryforward	151,042.00	15,000.00
(b) Standard deduction	(500.00)	(500.00)
(c) Exemption	500.00	-
Taxable income adjusted	\$ 99,494.54	\$ 3,592.65
Tax on above	\$ 99,494.54	\$ 3,592.65
Plus: Self-employment tax	582.20	52.00
Corrected income tax liability	\$ 100,076.74	\$ 3,644.65
Tax shown on return	182.20	52.00
Deficiency in income tax	\$ 99,494.54	\$ 3,592.65

Rocklin Benjamin

-2-

Statement

Explanation of Adjustments

(a) It is determined that you did not sustain a net operating loss in the taxable year 1965 within the meaning of Section 172 of the Internal Revenue Code. Consequently, there is no net operating loss carryforward to the years 1969 and 1970 and income is increased for these years by \$151,042.00 and \$15,000.00 respectively.

(b) A maximum standard deduction of \$600.00 is allowable for each of the years 1969 and 1970 in accordance with the provisions of section 141 of the Internal Revenue Code.

(c) Your claimed deduction for one exemption for your wife in the year 1969 is disallowed. You did not establish that she qualified as an exemption under Section 151 of the Internal Revenue Code.

125a
Transcript of Proceeding before the
Tax Court, October 4, 1973

UNITED STATES TAX COURT

-----x
MEDWIN BENJAMIN

Petitioner

Docket No. 6237-69
5056-73

VS

COMMISSIONER OF INTERNAL REVENUE

Respondent
-----x

LOCATION OF HEARING:

UNITED STATES TAX COURT
NEW YORK, NEW YORK

DATE:

October 4, 1973

BEFORE:

THE HONORABLE BRUCE M. FORRESTER

APPEARANCES:

STANLEY J. GOLDBERG

for the Respondent

126a
Transcript of Proceeding before the
Tax Court, October 4, 1973

P R O C E E D I N G S

THE CLERK: Be seated, please.

THE COURT: Call the case please, Mr. Clerk.

THE CLERK: Docket number 6237-69, Medwin Benjamin.

MR. GOLDBERG: Stanley J. Goldberg for the Respondent.

THE COURT: Is Medwin Benjamin in the Courtroom?

THE CLERK: No response, Your Honor.

THE COURT: This case was set for trial at 10:00 this morning, and it is now 11:00 o'clock, if you will make your motion, please, Mr. Goldberg?

MR. GOLDBERG: Your Honor, the Respondent moves to dismiss these cases for lack of prosecution, and I request that the Court enter deficiencies together with additions to the tax as set forth in the statutory notices of deficiency upon which these cases are based.

Your Honor, on Monday the taxpayer moved with the Respondent's concurrence to consolidate docket numbers 6237-69, and docket number 5056-73.

The Respondent request the Court to find the following statutory notices, and I will file a formal motion this afternoon in these cases, would you prefer me to recite the figures for the record, or shall I just file my formal motions?

THE COURT: File your formal motions.

MR. GOLDBERG: Fine.

THE COURT: Did I consolidate the cases on Monday?

127a
Transcript of Proceeding before the
Tax Court, October 4, 1973

MR. GOLDBERG: You did. Yes. The latter -- the 73 docket number represented years 1969 and 1970, which are the last two carry-forward years. The Petitioner claimed a loss in 1965 from his alleged confiscation of his business by the General Services Administration.

Docket number 6237-69 involves the years 1965, 1966, 1967 and 1968, and as I said before, the 1973 docket represents the taxable years 1969 and 1970.

THE COURT: Very well, the Respondent's motion is granted. The cases are dismissed for failure to properly prosecute.

MR. GOLDBERG: Thank you, Your Honor.

THE COURT: Ah -- Mr. Goldberg, and Mr. Hegan, if you will please get in touch with Mr. Poe, and ask him to get in touch with Mr. Delyra (phonetics), so if at all possible we can continue the trial of the Delyra case without -- without any undue delay this morning. And, keep me advised, I'll be in chambers, thank you.

MR. GOLDBERG: Thank you very much, Your Honor.

THE CLERK: Please rise.

(Whereupon, the hearing in the above was adjourned at 11:05, as described above.)

128a
Order of Dismissal and Decision
Docket No. 6237-69

UNITED STATES TAX COURT
WASHINGTON

MEDWIN BENJAMIN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 6237-69

ORDER OF DISMISSAL AND DECISION

This case called for trial at New York, New York on October 4, 1973, pursuant to notice. There was no appearance by or on behalf of petitioner. Counsel for respondent filed a motion to dismiss for lack of prosecution. After due consideration, it is

ORDERED, that respondent's motion to dismiss is granted and this case is dismissed for lack of prosecution; and it is further

ORDERED and DECIDED, that there are deficiencies in income tax and additions to the tax under sections 6651(a) and 6653(a), I.R.C. of 1954, due from the petitioner for the taxable years and amounts shown:

year	income tax	Additions to the Tax, IRC of 1954	
		sect 6651(a)	sect 6653(a)
1965	\$ 3,134.38	\$ 313.43	\$ 156.72
1966	1,130.00	169.49	- -
1967	26,117.18	2,611.72	1,326.98
1968	206,625.54	30,993.83	10,353.03

(signed) Bruce M. Forrester

Judge

Enter:

ENTERED OCT 17 1973

129a
Order of Dismissal and Decision
Docket No. 5056-73

UNITED STATES TAX COURT
WASHINGTON

-----MEDWIN BENJAMIN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 5056-73

ORDER OF DISMISSAL AND DECISION

This case was called for trial at New York, New York, on October 4, 1973, pursuant to notice. There was no appearance by or on behalf of petitioner. Counsel for respondent filed a motion to dismiss for lack of prosecution. After due consideration, it is

ORDERED, that respondent's motion is granted and this case is dismissed for lack of prosecution; and it is further

ORDERED and DECIDED, that there are deficiencies in income tax due from the petitioner for the taxable years 1969 and 1970 in the respective amounts of \$99,494.54 and \$3,592.63.

(signed) Bruce M. Forroster
Judge

Enter: ENTERED OCT 10 1973

130a
Motion by Petitioner for Leave to File Motion
to Vacate Order of Dismissal

STATE OF NEW JERSEY)
) ss:
COUNTY OF BERGEN)

The undersigned,

Medwin Benjamin, deposes and says:

(1) that on November 15, 1973, after careful consideration and much deliberation, I mailed to the Commissioner of Internal Revenue, Washington, D.C., Motion to Vacate Order of Dismissal and Decision.

(2) that Motion to Vacate Order of Dismissal and Decision was prepared by myself and Robert L. Katzman, an attorney admitted to practice in the State of New York, and mailed on leaving Mr. Katzman's office on November 15, 1973.

(3) that immediately upon receipt of your letter of November 27, 1973, I called the U.S. Post Office and was advised that, ordinarily, during a holiday season, mail would take at least two days to arrive at Washington, D.C.

(4) that November 15, 1973 evening was a Thursday and mail would, normally, be delivered on Saturday morning, November 17, 1973 and because the U.S. Tax Court was not open on Saturday said mail would have been received on Monday, November 19, 1973.

(5) that this Motion to Vacate Order of Dismissal and Decision was mailed to be received in due time through normal channels.

(6) that I am enclosing herewith copies of the Motion to Vacate Order of Dismissal and Decision, together with copies of Mr. Katzman's affidavit of December 5, 1973.

131a
Motion by Petitioner for Leave to File
Motion to Vacate Order of Dismissal

(7) that to all of the foregoing facts I, Medwin Benjamin, swear.

/s/
Medwin Benjamin
510 Sylvan Avenue
Englewood Cliffs, N.J. 07632

Sworn to Before Me
this 21 day of December 1973.

CHARLES CARUSO
Notary Public of New Jersey
My Commission expires June 26, 1974

132a
Motion by Petitioner for Leave to File
Motion to Vacate Order of Dismissal

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

The undersigned,

Robert L. Katzman, deposes and says:

(1) that I am an attorney admitted to practice
in the State of New York.

(2) That Mr. Medwin Benjamin is known to me.

(3) That Mr. Benjamin came to my office on November 15, 1973 and requested assistance concerning the proper form of an appeal concerning a tax case that he was involved in.

(4) That Mr. Benjamin prepared the necessary papers which were placed in an envelope addressed to the United States Tax Court, Washington, D.C.

(5) That Mr. Benjamin placed postage on the envelope and stated that he was going to mail the envelope directly after leaving my office.

Sworn to Before Me
this 5th day of December, 1973.

/s/

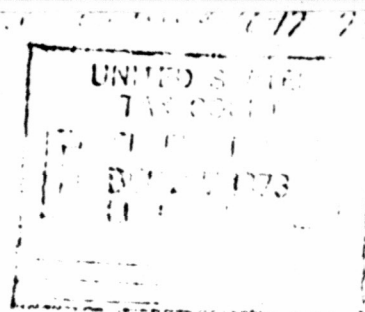
Robert L. Katzman

ERROL BLANK
Notary Public, State of New York
No. 24-0512500
Qualified
Commission Expires March 30, 1975

133a
Motion to Vacate Order of Dismissal and
Decision, Docket No. 6237-69

TAX COURT
MAIL ROOM

97th Jul 1973 9 25 TAX COURT



MEDWIN BENJAMIN,

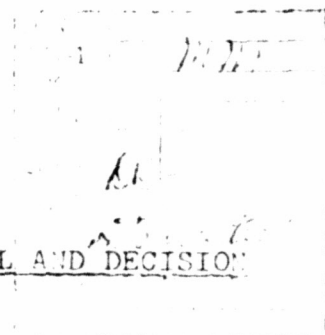
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 6237-69



MOTION TO VACATE ORDER OF DISMISSAL AND DECISION

THE PETITIONER MOVES that the Court vacate the Order of Dismissal and Decision entered on October 17, 1973 in the within matter.

IN SUPPORT THEREOF, the petitioner respectfully shows unto the Court:

1. This case was regularly called for trial at the Trial Session of this Court on October 1, 1973, at New York City, New York. Petitioner and respondent appeared before the Court at that time. On that occasion the Court granted a continuance to October 4, 1973. Respondent advised the Court that he would be in Delaware on October 4, 1973 and would be unavailable for trial on that day and that he needed additional time to prepare his case because of respondent's refusal to go forward with this case under a stipulation which had been signed by both parties hereto. Petitioner, on October 1, 1973, wrote a letter to this

. 134a
Motion to Vacate Order of Dismissal and
Decision, Docket No. 6237-73

Court further advising the Court of the foregoing. A copy of said letter is annexed hereto as Exhibit A.

2. The petitioner did not appear in Court on October 4, 1973. Because of that the respondent made a motion to dismiss for lack of prosecution. Said motion was granted by Order of Dismissal and Decision entered October 17, 1973. A copy of said order is annexed hereto as Exhibit B.

3. This matter involves alleged deficiencies in petitioner's income tax in an amount in excess of \$250,000.00. Petitioner at all times has intended to prosecute this action. However, the actions of the respondent in refusing to use a stipulation of facts which has been signed by both parties has caused the petitioner great hardship herein. If that stipulation cannot be used in this case then it will be necessary for petitioner to go to great expense, time and trouble in order to prove that which the parties had agreed to in the stipulation.

4. Petitioner contends that he is entitled to his day in Court on this matter and he should not be deprived of same because of his inability to appear in Court on one given occasion.

WHEREFORE, it is prayed that this motion be granted.



MEDWIN BENJAMIN
Petitioner
510 Sylvan Avenue
Englewood Cliffs, N.J.
07632

Exhibit "A" ^{135a} Motion to Vacate Order of Dismissal
and Decision, Docket No. 6237-69

October 1, 1973

Tax Court Courtroom Room 206
Federal Building
26 Federal Plaza
New York, N. Y.

Attention: Federal Judge of United
States Tax Court Now hearing
Cases in Room 206

Your Honor:

Because I didn't hear your name in the courtroom and it was not addressed to me as such, I have addressed the letter that you are receiving to the Federal Judge in charge of hearing cases in the Tax Court in Room 206 in the Federal Building.

Your honor, enclosed is a copy of the much talked-about Stipulation of facts of which I hold the original. You will note that the copy was received by me from Mr. Goldberg in 1971, together with his note. I have since then found the original which I hold. I would also ask you to read the Minutes of November 13, 1972 and November 20, 1972.

I am absolutely unable to break a previous engagement that I made for Thursday morning for Wilmington, Delaware and I told your Court this. I think that it is absolutely unreasonable for you to ask me to come to court unprepared and without a ruling as to the stipulation of facts referred to in the Minutes of November 20th and November 13th, and copies which I have enclosed in this letter, as my case depends on a Ruling.

I will call Mr. Goldberg and your Court on Thursday and see if we can have this heard on another day during the following week.

I don't think a taxpayer who has a claim should lose his rights because he is unable to keep an appointment that the Court made without prior knowledge and reasonable notice. I don't think that I could make an appointment for the Court without reasonable notice to them. Aren't I entitled to the same privilege?

Very respectfully submitted

MAURICE BENJAMIN

A

Exhibit "B" to Motion to Vacate Order of Dismissal and
Decision, Docket No. 6237-69

UNITED STATES TAX COURT
WASHINGTON

EDWIN BENJAMIN,

Petitioner,

v.

Docket No. 6237-69

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER OF DISMISSAL AND DECISION

This case called for trial at New York, New York on October 4, 1973, pursuant to notice. There was no appearance by or on behalf of petitioner. Counsel for respondent filed a motion to dismiss for lack of prosecution. After due consideration, it is

ORDERED, that respondent's motion to dismiss is granted and this case is dismissed for lack of prosecution; and it is further

ORDERED and DECIDED, that there are deficiencies in income tax and additions to the tax under sections 6651(a) and 6653(a), I.R.C. of 1954, due from the petitioner for the taxable years and amounts shown:

year	income tax	Additions to the Tax, IRC of 1954	
		sect 6651(a)	sect 6653(a)
1965	\$ 3,134.38	\$ 313.43	\$ 156.72
1966	1,100.00	169.49	- -
1967	26,117.13	2,611.72	1,326.98
1968	206,625.34	30,993.33	10,353.03

(signed) Bruce M. Forrester

Judge

Enter:

FILED OCT 17 1973

B

UNITED STATES TAX COURT

MEDWIN BENJAMIN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 5056-73

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138a
Motion to Vacate Order of Dismissal and
Decision, Docket No. 5056-73


Court further advising the Court of the foregoing. A copy of said letter is annexed hereto as Exhibit A.

2. The petitioner did not appear in Court on October 4, 1973. Because of that the respondent made a motion to dismiss for lack of prosecution. Said motion was granted by Order of Dismissal and Decision entered October 17, 1973. A copy of said order is annexed hereto as Exhibit B.

3. This matter involves alleged deficiencies in petitioner's income tax in an amount in excess of \$100,000.00. Petitioner at all times has intended to prosecute this action. However, the actions of the respondent in refusing to use a stipulation of facts which has been signed by both parties has caused the petitioner great hardship herein. If that stipulation cannot be used in this case then it will be necessary for petitioner to go to great expense, time and trouble in order to prove that which the parties had agreed to in the stipulation.

4. Petitioner contends that he is entitled to his day in Court on this matter and he should not be deprived of same because of his inability to appear in Court on one given occasion.

WHEREFORE, it is prayed that this motion be granted.



MEDWIN BENJAMIN
Petitioner
510 Sylvan Avenue
Englewood Cliffs, N.J.

07632

October 1, 1973

Tax Court Courtroom Room 206
Federal Building
26 Federal Plaza
New York, N. Y.

Attention: Federal Judge of United
States Tax Court Now hearing
Cases in Room 206

Your Honor:

Because I didn't hear your name in the courtroom and it was not addressed to me as such, I have addressed the letter that you are receiving to the Federal Judge in charge of hearing cases in the Tax Court in Room 206 in the Federal Building.

Your honor, enclosed is a copy of the much talked-about Stipulation of facts of which I hold the original. You will note that the copy was received by me from Mr. Goldberg in 1971, together with his note. I have since then found the original which I hold. I would also ask you to read the Minutes of November 13, 1972 and November 20, 1972.

I am absolutely unable to break a previous engagement that I made for Thursday morning for Wilmington, Delaware and I told your Court this. I think that it is absolutely unreasonable for you to ask me to come to court unprepared and without a ruling as to the stipulation of facts referred to in the Minutes of November 20th and November 13th, and copies which I have enclosed in this letter, as my case depends on a Ruling.

I will call Mr. Goldberg and your Court on Thursday and see if we can have this heard on another day during the following week.

I don't think a taxpayer who has a claim should lose his rights because he is unable to get an appointment that the Court made without prior knowledge and reasonable notice. I don't think that I could make an appointment for the Court without reasonable notice to them. Aren't I entitled to the same privilege?

Very respectfully submitted,

MAURICE BENJAMIN

A

Exhibit "B" to

Motion to Vacate Order of Dismissal and
Decision, Docket No. 5056-73UNITED STATES TAX COURT
WASHINGTON

MEDWIN BENJAMIN,

Petitioner,

v.

Docket No. 5056-73

COMMISSIONER OF INTERNAL REVENUE.
Respondent.

ORDER OF DISMISSAL AND DECISION

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ORDERED and DECIDED, that there are deficiencies in income tax due from the petitioner for the taxable years 1969 and 1970 in the respective amounts of \$99,494.54 and \$3,592.63.

(signed) Bruce M. Forrester
Judge

Enter: ENTERED OCT 10 1973

B

141a
Notice of Filing and Hearing of Motion Regarding
Vacating Orders of Dismissal and Decision

UNITED STATES TAX COURT
WASHINGTON
January 8, 1974

MEDWIN BENJAMIN

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent

Docket No. 6237-69

NOTICE OF FILING AND HEARING OF MOTION

You are hereby notified that the Petitioner on December 27, 1973 filed a motion in the above-entitled case, a copy of which motion is served herewith on the Respondent.

That motion has been calendared for hearing by the Court at Washington, D.C., in Courtroom No. 2, 1111 Constitution Avenue, N.W., at 10:00 a.m. on February 20, 1974. Your attention is called to the provisions of Rule 50(c) with regard to personal appearance at that hearing.

CHARLES S. CASAZZA,

Clerk of the Court

Copy of Notice & Motion

To: Respondent

Copy of Notice

To: Medwin Benjamin
510 Sylvan Avenue
Englewood Cliffs, New Jersey 07632

142a
Order dated January 21, 1974

UNITED STATES TAX COURT
WASHINGTON

MEDWIN BENJAMIN

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 6237-69

ORDER

Pursuant to the informal request of the petitioner,
it is

ORDERED that petitioner's motion to vacate the decision
is stricken from the February 20, 1974 Motions Session at
Washington, D.C. and it is further

ORDERED that the motion is hereby calendared for hearing
at New York, New York on May 13, 1974 at 10:00 a.m. in
Tax Court Courtroom, Room 206, Federal Building, 26 Federal
Plaza, New York, New York.

(Signed) Bruce M. Forrester

Judge

Dated: Washington, D.C.
January 21, 1974

Order dated March 19, 1974

UNITED STATES TAX COURT
WASHINGTON

MELVIN BENJAMIN

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 5056-73

ORDER

The affidavit of petitioner filed December 26, 1973 as his motion for leave to file a motion to vacate order of dismissal and decision was inadvertently filed in only Docket No. 6237-69 and is hereby considered as also having been filed that date at Docket No. 5056-73. The premises considered, it is

ORDERED that leave to file the motion to vacate the order of dismissal and decision in Docket No. 5056-73 is granted as of December 27, 1973. It is further

ORDERED that the motion to vacate the order of dismissal and decision entered October 17, 1973 in Docket No. 5056-73 is calendared for hearing at New York, New York on May 13, 1974 at 10:00 a.m. in Tax Court Courtroom, Room 206, Federal Building, 26 Federal Plaza, New York, New York.

James M. E. ...
Judge

Dated: Washington, D.C.
March 19, 1974

RECEIVED
MAR 20 1974

144a
Minutes of Proceeding before Tax Court
dated May 13, 1974



**UNITED STATES TAX COURT
MINUTES OF PROCEEDINGS**

Title of case MELVIN BENJAMIN, et al Docket No. 6237-69
6054-73
Date called May 13, 1974 Place New York, New York Transcript
Date of Trial _____ Place _____ Ordered yes cc
Judge Brace M. Connolly Reporter Patricia Schlaifert Transcript
Counsel { For Petitioner Harold Greenberg, c/a filed May 13, 1974 Ordered _____
For Respondent Stanley J. Goldberg _____

Proceedings and Action: Hearing On:
Petr. Motion to Vacate Orders of Dismissal and Decisions: DENIED
(entered on Oct. 17, 1973)

Filed during Session both #s
(and action if necessary) Appearance for Petr. by Harold Greenberg: FILED
both #s
Affidavit of Melvin Benjamin with attached transcript: Filed.

Original briefs: Petitioner _____ Respondent _____
Reply briefs: Petitioner _____ Respondent _____
Time consumed in trial cc Signed Robert G. Groves Deputy Clerk.

WITNESSES

For Petitioner

For Respondent

EXHIBITS

PETITIONER'S (Number and describe)

RESPONDENT'S (Letter and describe)

(Over)

UNITED STATES TAX COURT
WASHINGTON

-----x
MEDWIN BENJAMIN

Petitioner

AFFIDAVIT

v.

Docket No. 6237-69

COMMISSIONER OF INTERNAL REVENUE

Respondent
-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

MEDWIN BENJAMIN, being duly sworn, deposes and says:

1. That I am the Petitioner in the above entitled proceeding and submit this affidavit in further support of my motion to vacate the order of dismissal and decision entered on October 17, 1973 in the above matter.

2. Annexed hereto and marked Exhibit "A" is a stipulation of facts that was previously entered into between Petitioner and K. Martin Worthy, Chief Counsel of the Internal Revenue Service. It was on this stipulation that Petitioner was prepared to try this case in the Fall of 1973. Prior to May 1974, Petitioner did not have counsel representing him. He has always been of the belief that he need not try any issues in this Court other than as indicated in the executed stipulation.

3. Petitioner has now engaged Harold Greenberg of 540 Madison Avenue, New York, New York, to represent him on his behalf to appear on this motion and to prepare his case properly for trial. If the

Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

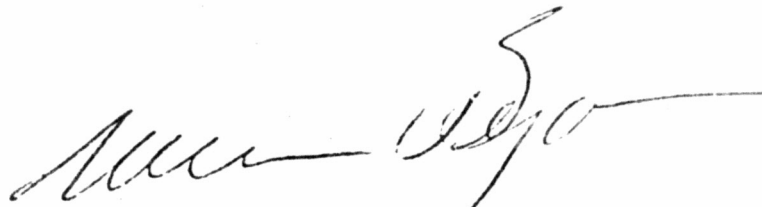
stipulation annexed (Exhibit "A") is not accepted by this Court then Mr. Greenberg has been advised by me to subpoena all witnesses and documents necessary in order to prepare my defense. I have annexed hereto and marked as Exhibit "B", a copy of the transcript of the proceedings before this Court held on October 1, 1973.

4. This matter involves a substantial amount of taxes and affects other years where the total tax liability and interest will be approximately \$400,000.

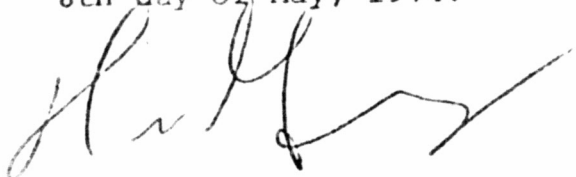
5. Petitioner requests that he have his day in Court, that the motion to vacate the decision be stricken, and that the case be set down for trial.

Sworn to before me this

8th day of May, 1974.



MEDWIN BENJAMIN



HAROLD GREENBERG
Notary Public, State of New York
No. 31550279
Qualified in New York County
Commission Expires March 30, 1975

Exhibit "A" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

UNITED STATES TAX COURT

MEWIN BENJAMIN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 6287-69

STIPULATION OF FACTS

It is hereby stipulated that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part thereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts stipulated, which is material and relevant.

1. Petitioner, Medwin Benjamin, filed his 1965 through 1968 Federal income tax returns with the District Director, Internal Revenue Service, Jacksonville, Florida, true copies of which are attached hereto and marked Exhibits 1-A through 4-B, inclusive.

2. Petitioner's 1965 return was filed on August 22, 1966. On April 15, 1966, petitioner applied for, and was granted, an extension of time to file his 1965 return not later than June 15, 1966. A subsequent request for an extension on filing to July 15, 1966 was denied.

3. Petitioner's 1966 return was filed on June 21, 1967. An application for an extension of time to file the 1966 return was denied.

Exhibit "A" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

4. Petitioner's 1967 return was filed on August 19, 1968. An application for extension of time to file by July 15, 1968 was granted but no subsequent application for extension was made.

5. Petitioner's 1968 return was filed on June 16, 1969 although no application for extension of time to file was made.

6. Petitioner is an individual who, on the date of filing of his returns, maintained two addresses, 80 Central Park West, New York, New York and 1005 Collins Avenue, Miami Beach, Florida.

7. Jeopardy assessments of the deficiencies determined in this case were made for all years, 1965, 1966, 1967 and 1968. None of the assessments have been collected.

8. The District Director of Internal Revenue, Jacksonville, Florida issued the statutory notice of deficiency for the years 1967 and 1968. The Appellate Division, Miami, Florida issued the statutory notice for the years 1965 and 1966.

9. On petitioner's 1965 return, he claimed a two million dollar (\$2,000,000.00) ordinary loss resulting from the alleged destruction of his business assets by the United States Government.

10. The alleged loss referred to in paragraph 9 of this stipulation was based on the following facts:

(a) On January 3, 1961 at a meeting held in New York City attended by petitioner, an Assistant United States Attorney, and officials of the General Services Administration (GSA), petitioner agreed to confess judgment on a claim by GSA in the amount of \$934,493 plus interest, or a total of \$1,237,787.

Exhibit "A" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

(b) Negotiations dealing with payment of the judgment reached an impasse and the United States Attorney, on February 21, 1951, caused judgment to be entered against petitioner. Execution was issued March 5, 1951.

(c) Petitioner's assets were then impounded and sold for \$750,000, of which \$382,674 was paid to GSA, with the remainder used to pay creditors of the sale. The parties are not in agreement as to the date this sale took place.

(d) Petitioner, on October 26, 1952 instituted an action in the United States Court of Claims, Case No. 502-02 for breach of an alleged agreement to withhold execution on the judgment referred to in subparagraph (b) of paragraph 10 of this stipulation. A true copy of the opinion of said Court is attached hereto and marked Exhibit 5-11.

11. On petitioner's 1951 return, filed with the District Director, Brooklyn, New York, a statement was included as follows:

"Due to the fact that a Federal Receiver was appointed to operate and liquidate my business in 1951 and their figures showed the amount of loss was not available no statistical information is being attached."

No claim was made thereon for any loss described in paragraph 10 of this stipulation from the seizure. A true copy of that return is attached hereto as Exhibit 6-1.

12. On petitioner's 1952 and 1953 returns, no claim was made for any loss resulting from the seizure described in paragraph 10 of this stipulation. True copies of said returns are attached hereto as Exhibits 7-G and 8-1.

Exhibit "A" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

13. On petitioner's 1954 return he stated that the amount of his loss for the year 1951 were "none." A true copy of said return is attached hereto as Exhibit 10-I.

14. On petitioner's 1955 and 1956 returns, true copies of which are attached hereto as Exs. 10-J and 10-K, he claimed net operating loss deductions resulting from losses incurred in 1951, alleging same to have been claimed in prior years.

15. The parties agree that the issue to be determined by the Court in regard to the alleged seizure loss is as follows:

- (a) Did the loss occur in 1965 when the Court of Claims rendered its opinion on petitioner's damage action?
- (b) Did the loss occur in 1951 when the assets were seized?
- (c) Did the loss occur in 1952 when the assets were alleged by petitioner to have been sold pursuant to the seizure?

~~16. Attached hereto as Exhibit 12-L is a true copy of an Appellate Division Supplemental Statement dated June 7, 1963 and prepared in connection with respondent's consideration of petitioner's Tax Court case for the years 1954, 1955 and 1956 under Ecket No. 161-62.~~

17. Attached hereto as Exhibit 13-M is a true copy of a Petition filed on behalf of petitioner in the Tax Court case referred to in paragraph 15 of this stipulation, Ecket No. 161-62.

18. Attached hereto and marked Exhibit 14-N is a true copy of a letter dated February 13, 1963 from Henry C. Stockell, Jr. to the Clerk, United States District Court, Eastern District of New York, Brooklyn, New York.

Exhibit "A" to

Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

~~19. Attached hereto and marked Exhibit 15-C is a true copy of an Appellate Division Supplem. to a writ dated February 8, 1961 and prepared in the case of United States vs. [redacted], et al., [redacted] in the United States Tax Court under Docket No. 111-61, et al.~~

20. Attached hereto and marked Exhibit 16-B is a true copy of the report of Revenue Agent Edward P. Gory dated April 25, 1950 and prepared incident to the audit of petitioner's returns for the years 1931 through 1946, inclusive.

_____(signed) Medwin Benjamin
Petitioner

(SIGNED) K. MARTIN [redacted]
GWC

K. MARTIN [redacted]
Chief Counsel
Internal Revenue Service

UNITED STATES TAX COURT

MEDWIN BENJAMIN

Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

Docket No. 6237-69

LOCATION OF HEARING: New York, New York

DATE: October 1, 1973

BEFORE: HONORABLE Bruce M. Forrester

APPEARANCES:

Stanley J. Goldberg, Esq., for Respondent.

P R O C E E D I N G S

THE CLERK: Docket No. 6237-69, Medwin Benjamin.

Your Honor, this is the case on which the
gentleman called me stating he was delayed in traffic.

THE COURT: And no one has answered.

Very well, if you'll call again at the close of
the call of the others.

(Whereupon, this case was postponed
until the end of the calendar call
as indicated.)

THE CLERK: Docket No. 6237-69, Medwin Benjamin.

(Pause.)

Your appearances please, gentlemen?

MR. BENJAMIN: Medwin Benjamin for himself.

MR. GOLDBERG: Stanley J. Goldberg for the
Respondent.

Your Honor, the Respondent is ready for trial in
this case.

MR. BENJAMIN: Your Honor, the Petitioner would
like to take this case and join it with a previous case
that is before the Court.

All of the facts in the previous case and this
case are the exact same items with the exception of the
facts in the previous case goes from '67 to '68 and this
case is '69 and '70. Am I right?

1 MR. GOLDBERG: Your Honor, there is a recent case
2 that was petitioned and answered. I don't have the present
3 docket number, but it's a '73 case which is related to the
4 present case.

5 And I think Mr. Benjamin would like to make a
6 motion to consolidate that case with this.

7 I have no objection.

8 The issue in this case is whether Petitioner is
9 entitled to an operating loss in '65. The present docket,
10 I believe, has the year '65, '6, '7 and '8. And the other
11 case that was recently petitioned was either '68 and '69 or
12 '69 and '70.

13 But the latter two years where this particular
14 case leaves off. But those were the carry forward years,
15 in other words.

16 MR. BENJAMIN: They were the carry forward years
17 from '65 to '70.

18 THE COURT: Has Mr. Goldberg stated it accurately
19 what it is you want to do?

20 MR. BENJAMIN: Yes. Yes.

21 MR. GOLDBERG: I don't have that present docket
22 with me now, but I can get that for you.

23 MR. BENJAMIN: I have it with me, I think.

24 (Pause.)

25 Is that the same one?

1 (Mumbling.)

2 (Pause.)

3 THE COURT: All right. If you're agreed on that,
4 the cases can be consolidated for trial, briefing and
5 opinion when you get that folder, Mr. Goldberg, so that
6 you'll be able to accurately describe it.

7 MR. GOLDBERG: Yes.

8 THE COURT: Now, do both parties want trial?

9 MR. BENJAMIN: Yes.

10 Your Honor, the sum and substance of this case
11 and the arguments that I've been having with the government's
12 attorney is the stipulation of facts that were agreed
13 upon in this case in Miami.

14 The government attorney keeps forwarding the
15 stipulations of facts and the stipulations that he forwards
16 are true to some extent. But he just refuses to -- agree
17 to the signed stipulation of three important facts that
18 were done in Miami.

19 They seem to disregard Miami, Florida as a -- as
20 not a part of the United States. And I just can't understand
21 it.

22 My theory and my thought is that if a stipulation
23 of facts was signed in Miami by U. S. government attorneys
24 and I'm appearing in New York on the same case, that
25 stipulation should be.

Exhibit "B" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

1 Since the time that this case was called and
2 since these arguments, my two important witnesses have died.
3 My brother died and the gentleman that was my secretary for
4 a number of years through all this holocaust died.

5 It leaves me with practically no witnesses for
6 the case.

7 However, I don't think I'll need any witnesses
8 if the stipulation that was signed in Miami were moved along
9 with this case in New York. And I think that the trial
10 would be very short and I could take care of it myself.
11 If you will agree or you will advise or you will suggest
12 to the U. S. attorney that these -- that this -- these
13 facts that were signed in Miami should stand in this case
14 in New York.

15 THE COURT: What do you say to that, Mr. Goldberg?

16 MR. GOLDBERG: Your Honor, the case was heard
17 before Judge Atkins in Miami on June 7, 1971.

18 A stipulation was entered into by an attorney
19 representing the Respondent in his Miami office and Mr.
20 Benjamin.

21 Petitioner at that time --

22 MR. BENJAMIN: May I stop him if he's not true,
23 Your Honor. I mean, if he's -- he's just forgetting a
24 few things?

25 THE COURT: You'll have to wait until he finishes

1 and then straighten him out.

2 MR. BENJAMIN: I see. Okay.

3 MR. GOLDBERG: According to the transcript of that
4 proceeding which I have in my file, the government was going
5 to move to dismiss for lack of prosecution.

6 At that time, Mr. Benjamin moved to have the case
7 venue changed -- the case set for trial in New York inasmuch
8 as he was going to have -- get an attorney by the name of
9 Mr. Buchsbaum.

10 At that time -- Mr. Buchsbaum -- B U C H S B A U M.

11 He said he had engaged Mr. Buchsbaum and wanted
12 Mr. Buchsbaum to look over this stipulation of fact.

13 Judge Atkins refused to have the stipulation filed.
14 And the case was continued. And the new place of trial
15 was New York.

16 The case then came before Judge Quealy here in
17 New York City. I represented the Respondent at that
18 particular time. And we had the same type of problem. I
19 wrote Mr. Benjamin when I received my file to come in for
20 a stipulation of fact conference. And Mr. Benjamin said he
21 had previously stipulated to something in Miami. And I
22 said that I would not be bound by that stipulation since
23 time has changed and the events have changed in this case
24 and a stipulation was not filed.

25 Judge Quealy continued the case.

1 This case came before Judge Raum in November of
2 1972, and at that time Judge Raum advised the Petitioner
3 that he would not require the government to file the
4 stipulation that was signed by the parties but unfiled in
5 Miami --

6 MR. BENJAMIN: If Your Honor please, I need a
7 pencil and a piece of paper. I can't remember all these --

8 MR. GOLDBERG: And again I sent Mr. Benjamin a
9 proposed stipulation of facts last month with the exhibits
10 attached.

11 Judge Raum was quite emphatic and we did have
12 extensive discussions with him in chambers regarding this
13 problem. And he said the stipulation was not filed in
14 Miami. And he would not require the government to file
15 the stipulation in this case.

16 (Pause.)

17 THE COURT: Yes, Mr. Benjamin?

18 MR. BENJAMIN: Your Honor, if I ever saw a bunch
19 of double talk, this is it.

20 I just can't understand it.

21 I never went to Court in Miami. The stipulation
22 that I signed in Miami was done mostly by mail from Miami
23 to New York.

24 And none of the Judges have ever agreed that the
25 stipulation that I had would not be heard.

Exhibit "B" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

1 In my last appearance in this Court, -- I asked
2 the Court to consider the stipulation and they told me that
3 it wasn't filed.

4 I asked the Court to ask Mr. Goldberg to file the
5 stipulation, and they said, when it did come to trial again
6 that Mr. Goldberg would file the stipulation. And it so
7 states in the minutes here.

8 (Pause.)

9 Now, I don't know of any facts that could have
10 changed the stipulation when the stipulation refers to
11 1951, '52 and 1953. What are the facts that might have
12 changed between 1970 and 1973 that has to do with '51 or
13 '53?

14 I think that Mr. Goldberg might have an idea that
15 I obtained this stipulation possibly by threats or
16 coercion or by bribery. I just don't know why he won't
17 adhere to the stipulation of facts.

18 He sends me a stipulation of facts that includes
19 everything that says the truth and leaves out the three
20 most important ones that I signed.

21 I could have tried this case in Miami, if I didn't
22 have this stipulation of facts that I needed.

23 And the stipulation so states in no uncertain
24 terms there are three things to be tried before this Court.
25 And I intend to try them three things. And if the stipulation

1 that's signed in Miami isn't any good in New York, well
2 then it just isn't any good.

3 If he's trying to stop me in any way from filing
4 it, then that's another thing. But Mr. Goldberg had this
5 stipulation in 1970 and with his own handwriting sent me
6 a copy of it in 1972 explaining to me that this was the
7 stipulation that was filed in Miami and this is the item
8 that we're going to go by.

9 After that time, he decided to change his mind
10 and he didn't like that stipulation. That he don't like
11 the things that other people do. And what he does is the
12 proper thing.

13 THE COURT: Mr. Benjamin, a stipulation is an
14 ambulatory sort of thing and until it's filed either party
15 has the right to change his mind.

16 The Respondent certainly does in this case.

17 This stipulation which was signed in Miami has
18 never been filed. This case has never been tried.

19 I will not require either party to file a
20 stipulation in this case. Now, we're going to go forward
21 from there.

22 Are we ready to go to trial in this case?

23 MR. GOLDBERG: Your Honor, that is fine with me.

24 MR. BENJAMIN: Your Honor, please, if you were
25 talking to me. Your Honor, please, the Judge -- the previous

Exhibit "B" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

1 Judge last year said that I could file the stipulation when
2 I went to Court this year.

3 (Pause.)

4 Now, the stipulation was duly signed. I don't
5 know the process of the Court and I don't know whether you're
6 supposed to file it or whether you're not supposed to file
7 it. But this was signed and this was agreed upon.

8 MR. GOLDBERG: Your Honor?

9 THE COURT: But apparently it's not agreed upon
10 now.

11 MR. BENJAMIN: Have they the right to change a
12 stipulation?

13 THE COURT: Yes sir. And so do you.

14 (Pause.)

15 Now, without the stipulation, does that leave
16 any facts stipulated, gentlemen?

17 MR. GOLDBERG: I sent Mr. Benjamin a stipulation
18 of facts, Your Honor, which I think puts forward all the
19 facts in the case that can be reasonably stipulated.

20 And it was a quite lengthy one, with exhibits
21 attached, and I see no reason why Mr. Benjamin won't sign
22 that stipulation.

23 (Pause.)

24 THE COURT: Are you willing to sign it, Mr.
25 Benjamin?

1 MR. BENJAMIN: If he adds the three items to it
2 that belong -- that came around the original stipulation.

3 THE COURT: Will you add the three items, Mr.
4 Goldberg?

5 MR. GOLDBERG: No, I won't, Your Honor.

6 THE COURT: He won't. Will you sign it without
7 them?

8 MR. BENJAMIN: No sir.

9 THE COURT: How long will it take to try the
10 case with no stipulation, gentlemen?

11 MR. BENJAMIN: Your Honor, if they don't adhere
12 to their original agreement, I have no way of trying this
13 case without a voluminous amount of papers, files -- this
14 goes through -- back through 1951 and '52 -- and it might
15 very well take months.

16 And I don't have the money to do it with.

17 MR. GOLDBERG: Your Honor?

18 THE COURT: Yes sir?

19 MR. GOLDBERG: This -- when I first obtained the
20 case, it was transferred to me from Miami, it was assigned
21 to me in 1971 -- Mr. Benjamin was fully aware that I was
22 proposing a new stipulation of facts and that what his
23 burden of proof would be.

24 The gentlemen supposedly that are involved -- we
25 had another government agency -- in our -- in this building.

Exhibit "B" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

1 they could have been subpoenaed. The records -- a year
2 and a half ago.

3 (Pause.)

4 The --

5 THE COURT: This case is getting quite old, Mr.
6 Benjamin. I think we'd better go to trial.

7 We've had an awful lot of pretrial machinations.
8 I think I'd better give you a setting and we'll go to
9 trial.

10 Mr. Goldberg, how long do you think it will take
11 to try the case?

12 MR. GOLDBERG: Oh well. I would say -- if the
13 stipulation were signed that I sent him -- perhaps no more
14 than a day, a day and a half.

15 THE COURT: Well, now in this case the entire
16 burden of proof is on the Petitioner.

17 MR. GOLDBERG: Right.

18 (Pause.)

19 MR. BENJAMIN: In other words, Your Honor, are
20 you ruling that the former petition that was signed --

21 THE COURT: Yes, sir. A stipulation is ambulatory.
22 Until it is filed with the Court, either party can withdraw
23 from it.

24 You can't force anybody to sign a stipulation.
25 This has never been filed. It's never been a Court docu-

Exhibit "B" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

1 ment.

2 MR. BENJAMIN: Your Honor, you just said you can't
3 force anybody to sign the stipulation.

4 THE COURT: That's right.

5 MR. BENJAMIN: I didn't force them to sign it.

6 THE COURT: To sign and file.

7 MR. BENJAMIN: The -- I have a letter from the
8 United States Attorney's office in Miami saying that they
9 didn't file it because they wanted to keep it for future
10 reference.

11 Does that mean that it isn't any good? Or they
12 didn't file it because -- I have a letter here. It says,
13 "In response to your letter of November 20th, our records
14 reflect that the executed -- executed stipulation of the
15 facts were not filed with the Court, but was returned for
16 future use."

17 What use have they got with it?

18 THE COURT: What is it?

19 MR. BENJAMIN: You should contact the New York
20 regional counsel office to which your case was assigned
21 in connection with your request.

22 THE COURT: Let me see the letter, please?

23 MR. BENJAMIN: Yes sir.

24 MR. GOLDBERG: Has Your Honor had a chance to
25 look over Judge Atkins' -- ?

Exhibit "B" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments

1 MR. BENJAMIN: If Your Honor please --

2 MR. GOLDBERG: -- Judge Raum's -- ?

3 MR. BENJAMIN: -- he's all out of -- .

4 (Pause.)

5 THE COURT: Well, there are many uses to which
6 a signed stipulation could be put. It could be used for
7 reference. It could be used for many things.

8 Until it's filed, Mr. Benjamin, --

9 MR. BENJAMIN: I don't know how --.

10 THE COURT: -- it is not a Court document.

11 MR. BENJAMIN: Your Honor, I don't know how to
12 file it. And the Judge before you --

13 THE COURT: You can't file it. It takes both
14 parties to file it.

15 The stipulation has to be an agreed thing.

16 MR. BENJAMIN: The Judge before you said that the
17 stipulation could be filed at the time of the -- item that's
18 coming up. I have it here. I can't -- I guess I'm too
19 nervous.

20 I can't read it, but it's in here, Your Honor.

21 MR. GOLDBERG: Judge Raum, in fact, would not
22 accept the stipulation. He suggested the government file
23 a Rule 35 -- 31B5 motion to compel Mr. Benjamin to stipulate
24 our new proposed stipulation at that time.

25 (Pause.)

1 MR. BENJAMIN: It's -- well, Your Honor, I -- I --
2 really must go anew into the case if they won't accept the
3 stipulation they have.

4 And it would at least take me three months to
5 prepare it. It's a voluminous case. It's a large case with
6 large figures that has to do with over eight million
7 dollars worth of inventory that were destroyed by the
8 government and their receivers.

9 The -- the proof of it would be just colossal.

10 MR. GOLDBERG: Your Honor, this is not a surprise
11 for Mr. Benjamin. This was explained to him several times
12 before in the last two years.

13 (Pause.)

14 MR. BENJAMIN: I'm not looking for an edge of
15 any kind.

16 I'm just looking for somebody to say and do what
17 they agreed.

18 MR. GOLDBERG: Your Honor, I think at that time
19 when this case came in Miami we were duped by Mr. Benjamin
20 to believing he had an attorney here in New York who was
21 going to review the stipulation at that time.

22 I don't believe -- I've never been contacted by
23 any attorney Mr. Benjamin has in New York.

24 (Pause.)
25

167a
Exhibit "B" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments
In fact, Judge Atkins refused to accept the

stipulation.

MR. BENJAMIN: That's so, Your Honor. Judge Atkins said it could be entered.

MR. GOLDBERG: Did you have the transcript of Judge Atkins?

MR. BENJAMIN: I'm looking for it now. You make me so nervous.

MR. GOLDBERG: Well, I have it. I'm sorry.

MR. BENJAMIN: Who's Judge Atkins, the first Judge or the second?

MR. GOLDBERG: That was the one in Miami when you appeared in Miami.

MR. BENJAMIN: I never appeared in Miami.

MR. GOLDBERG: Then your name got on the record somehow.

MR. BENJAMIN: Well, but I was never there. Did you see me there?

MR. GOLDBERG: The Court has an appearance in Miami on June 7th, '71, Mr. Benjamin pro se. And our office of the Chief Counsel was represented by Andrew Weinstein of our Miami office.

MR. BENJAMIN: Maybe I was. I don't know. Let me see that.

MR. GOLDBERG: I think you better look at this

168a

Exhibit "B" to Affidavit of Medwin Benjamin dated
May 8, 1974 with Attachments
transfer, Mr. Benjamin.

17

(Pause.)

MR. BENJAMIN: Yes.

THE COURT: I believe you were in Miami on June 7,
'71, Mr. Benjamin.

MR. BENJAMIN: Yes. Yes, I see that.

(Pause.)

THE COURT: Gentlemen, I think we'd better go
to trial. This has been kicking around for years and years
and things have to come to an end some time.

(Pause.)

When -- what day do you want to go to trial,
gentlemen?

MR. BENJAMIN: I need three months.

THE COURT: Well, we're going to go to trial at
this session, Mr. Benjamin.

MR. BENJAMIN: I don't know what your session is.

THE COURT: The session is set to start on
October 1 and to continue until the cases on this calendar
have been disposed of.

I'm probably going to give you a starting date
of Thursday or Friday this week.

MR. BENJAMIN: It is absolutely impossible, Your
Honor.

THE COURT: Well, it's -- but this has been going

1 on ever since -- what's the first year -- what's the date of
2 the statutory notice in this case?

3 MR. GOLDBERG: The date of the statutory notice
4 was '69. September 26, '69.

5 THE COURT: All things have to come to an end --

6 MR. BENJAMIN: Yes sir.

7 THE COURT: -- and we have to try this case with
8 no stipulation, bear in mind the burden of proof's on you.

9 We'll start out and you'll just do the best you
10 can.

11 MR. BENJAMIN: Your Honor, I intend to go through
12 with this case if I can. But to be prepared properly I
13 must have three months.

14 I'm prepared to --

15 THE COURT: Mr. Benjamin, you've had about three
16 years.

17 MR. BENJAMIN: And I'm prepared to go to trial
18 tomorrow morning on the three facts that we're stipulated
19 to, but you have seen fit to disregard the stipulation that
20 I've had signed.

21 So, now --

22 THE COURT: Sir, it is not a stipulation in that
23 sense. It has never been filed in this Court.

24 (Pause.)

25 MR. BENJAMIN: Are they the rules of the Court that

1 should a stipulation not been filed it is void?

2 THE COURT: It's not a stipulation until it's been
3 filed.

4 MR. BENJAMIN: It's not a stipulation.

5 Well, of course my opinion is that it is. I would
6 like to have three months to try my -- to assemble my facts.
7 And it's large enough to take three months.

8 However, if you make me come into Court on
9 Thursday and not giving me the proper amount of time, I've
10 no other alternative than to lose the case by the fact that
11 I wasn't prepared.

12 Now, you're the first Judge that's said that the
13 facts that were agreed upon by former -- by U. S. attorneys --

14 THE COURT: They haven't been agreed upon because
15 it's never been filed.

16 MR. BENJAMIN: Your Honor, I agree with what you
17 say because you know the law and I don't.

18 I only know that they were agreed upon because
19 they were signed. They were signed by -- and agreed upon
20 by people that signed.

21 Now, maybe they were signing them for themselves,
22 I don't know. But I do need three months to prepare. If
23 you want to take me and put me up against you for this
24 Thursday when I'm not prepared, I must tell you now that
25 the government is taking advantage of me because I can't

1 be prepared. And they have nothing other to do than to win.

2 If they have nothing other to do than to win, I --
3 intend to remain mute on all facts except the three that they
4 decided to try me on.

5 You must give me the time that I need to prepare,
6 Your Honor.

7 (Pause.)

8 THE COURT: How long do you think the trial will
9 take, Mr. Goldberg?

10 MR. GOLDBERG: Well, -- not knowing what Mr.
11 Benjamin has in mind, I would say a day, a day and a half.

12 (Pause.)

13 THE COURT: Very well. I'll give you the setting
14 at the close of the call of all of the cases here this
15 morning.

16 Call the next case please, Mr. Groves.

17 (Whereupon, this proceeding was
18 concluded as stated above.)
19
20
21
22
23
24
25

Certificate of Transcriber

Name: MEDWIN BENJAMIN

The foregoing pages, numbers 1 through 20 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by P. Schlairet on October 1, 1973 in the United States Tax Court located in New York, N. Y. _____, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

(Name) Raymond P. Comeau
Raymond P. Comeau

(Date)

173a
Entry of Appearance by Harold Greenberg

UNITED STATES TAX COURT

WASHINGTON

-----x
MEDWIN BENJAMIN

Petitioner

ENTRY OF APPEARANCE

Docket No. 6237-69

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent
-----x

The undersigned, being duly admitted to practice before the United States Tax Court, hereby enters his appearance for the Petitioner in the above-entitled case.



HAROLD GREENBERG

540 Madison Avenue
New York, New York 10022

174a
Transcript of Proceeding before
Tax Court on May 13, 1974

UNITED STATES TAX COURT

----- -x
MEDWIN BENJAMIN,

Petitioner

Docket No. 6237-69
5056-73

vs

COMMISSIONER OF INTERNAL REVENUE,

Respondent
----- -x

(Extract from Calendar Call)

LOCATION OF HEARING:

New York, New York

DATE:

May 13, 1974

BEFORE:

Honorable Bruce M. Forrester

APPEARANCES:

Harold Greenberg,
Attorney for Petitioner.

Stanley J. Goldberg,
Attorney for Respondent.

P R O C E E D I N G S

THE CLERK: Docket Nos. 6237-69 and 5056-73,
Medwin Benjamin and one other case.

MR. GREENBERG: Harold Greenberg for petitioner.

MR. GOLDBERG: Stanley J. Goldberg for the respondent.

THE COURT: Very well, gentlemen. Give me just a minute to read this affidavit, please.

Now, Mr. Greenberg, it happens that I was the Judge who was up here in October last year and the Judge who entered the order dismissing this case. I haven't reviewed these papers in detail, but as I remember it, Mr. Benjamin was here on Monday of that week and was urging that a Stipulation of Facts which he had signed down in Florida when the case was pending there was still good, so to speak, and that respondent should be forced to abide by that stipulation.

I pointed out to Mr. Benjamin that the Stipulation of Facts signed in Florida had been in preparation for a trial that was going to be had in Florida, that that trial was continued and that the case was moved from Florida to New York, as I remember it at Mr. Benjamin's request, that the Stipulation of Facts had been prepared only for the trial in Florida and that the respondent's counsel

could not and would not be forced to abide by a stipulation since they had found what they considered to be inaccuracies in it or positions that they no longer wished to abide by. It had been signed for a particular trial; that trial had not been held. The case had been the -- the venue had been moved and that this was a new trial. I'm still speaking from memory, but Mr. Benjamin, as I remember it, took rather violent exception to that statement by the Court and made some such statement to the effect that he was going to stand on it and then he wouldn't be here. I mean, it was rather belligerent, as I remember it. And, again, I'm not -- I'm doing this from memory several months old and I could be wrong on some of these details. I advised him on that Monday that his case was being set for trial on a date and time certain later in that trial session and that he should be here and that the respondent was not going to be held to this unused Stipulation of Facts. Mr. Benjamin, as I remember it, made some remark to the effect that he would not be here and he wasn't here and I defaulted him.

Now, if I've -- if I don't follow what actually happened, it's because my memory is faulty, but that is the impression that I still carry from the October session.

MR. GREENBERG: Mr. Benjamin told me that on

177a
Transcript of Proceeding before
Tax Court on May 13, 1974

October 1st you had told him to come to Court on October 4th and that he advised the Court that he had to be in Delaware and I -- and he sent a letter to the Court, I believe, stating that he had to be in Delaware, and I think he annexed that to his moving papers. I did not prepare the motion papers; I just came into this case last week and I'm at a disadvantage not having been here on October the 1st, so I really don't know what transpired. And I can only repeat what Mr. Benjamin advised me.

The transcript that is annexed to the affidavit may not be complete. This is the one that he gave me. It does not indicate the case being set for trial, although he does state to me it was set for trial on October the 4th and that he had to be out of town.

I want to say that I think the problem here is that Mr. Benjamin should have been represented by counsel from the very beginning, certainly when the case was transferred to New York, as to the effect of the stipulation, he said -- he states, and Mr. Goldberg has advised me that there is \$400,000 in tax and interest penalties involved because there are other years affected, which is certainly a substantial amount. He would like to have his day in Court and he wants me to prepare the proper handling of this case which will require going to the General Services Administration on Washington Street to

obtain various documents that are on file there, so Mr. Goldberg advises me. And I'm prepared to do that and to prepare the case for trial.

And if it could be put over -- what I'm requesting is an adjournment until the ~~September~~ term if the motion is set aside -- if the motion is granted and Mr. Benjamin's default can be vacated.

And if need be, it can be marked "granitorially" so the case will definitely go to trial in the fall.

THE COURT: Mr. Greenberg, what is your client's and what is your attitude now as to the question of whether or not respondent should be forced to accept this stipulation that was signed down in Florida?

MR. GREENBERG: Well, I checked the rules of the Tax Court and I am aware that the rules provide that until it's marked, it's put into evidence or it's marked it's not binding upon the Court, but the only thing I haven't researched is what is the effect of a stipulation that is signed by respondent and petitioner, whether this can be -- whether it has some effect in a Court proceeding. I don't know the answer to that. I checked the rule and I've tried to research some cases and I -- to date, I've been unable to come up with anything. I don't know if it has any effect at all. As I advised Mr. Benjamin -- of course, I only made a cursory review of

the law and read the rule in Tax Court as to the effect of the stipulation. I advised him that I did not know if it had any effect, but that in any event he should prepare a proper -- he should prove his case properly by obtaining the various records from General Services Administration in order to prepare the case for trial.

And I understand that Mr. Goldberg has advised me that there is the liquidator or receiver in the bankruptcy proceeding is still alive and is still available as a witness to testify at the trial as well. But this would have to be prepared. I don't know too much about the facts, yet. It's complicated. There was a Court of Claims' decision that I haven't gone into and I'm at a disadvantage not knowing what the entire case is about. But Mr. Benjamin would like to have his day in Court and would like me to prepare his case for him.

THE COURT: Why is not a stipulation ambulatory until it is filed and received by the Court? If you had a case for trial here this week and you had signed a stipulation and in the day or so while you were waiting around you discovered that in your opinion it was inaccurate or wrong and when the case was called for trial, would you not be able to object and say, no, I don't want that filed, it can't be filed because it's not right. Do you think the Court would force you to abide by some-

thing --

MR. GREENBERG: No, I think you had the right to -- I think the rule states you have a right to object to a stipulation.

THE COURT: Well, on materiality or relevancy, but you can't present evidence in derogation of the stipulation if it has been filed.

MR. GREENBERG: But if you have a stipulation, let's say, between two parties here and the petitioner relies on that stipulation in terms of seeking out evidence or trying to obtain evidence and he forecloses his right to obtain certain evidence that he could have obtained had he known or had he not known there would be a stipulation signed, then he may be prejudiced in not obtaining that evidence because he was under the belief that the respondent was going to stipulate as to that fact.

THE COURT: Well, of course, the basic question is, did he have a right to rely on it before it's filed at the time of trial. Let me look at this transcript for a minute.

Well, I find that at some time before October, the case was here before Judge Raum and that he had made an identical ruling to the one I've just announced as to this stipulation and so your client had been disabused

181a
Transcript of Proceeding before
Tax Court on May 13, 1974

of any preconceived notions that he might have had long before October and it seems to me he didn't do much about it, Mr. Greenberg.

MR. GREENBERG: Well, he may have been under the mistaken belief when he came to Court in October that the stipulation as far as he was concerned --

THE COURT: How could he have been? Judge Raum had told him in very -- in no uncertain terms that the Government was not going to be held to this stipulation that hadn't been filed. The trial hadn't proceeded.

That hearing before Judge Raum was in November, 1972, a year before, Mr. Greenberg. But what Judge Raum said didn't affect him much because he told me in October, '73, that without the stipulation, he would need three months to get ready for trial. Apparently he didn't believe Raum when Raum told him that respondent was not going to be held to that stipulation.

Even in a pro se petitioner, it's actions like this that the Court simply can't countenance, Mr. Greenberg. He just gives the appearance of doing everything in his power to keep from going to trial unless he can have a trial on his very special terms.

MR. GREENBERG: Well, he seems to indicate to me that he would like to proceed to a trial --

THE COURT: Well --

182a
Transcript of Proceeding before
Tax Court on May 13, 1974

MR. GREENBERG: -- and would like me to obtain
the --

THE COURT: -- let me finish reading this.

MR. GREENBERG: All right.

THE COURT: Mr. Greenberg, Mr. Benjamin on
October 1, 1973, didn't ever tell me that he had an other
commitments for the 4th. What he said was that he needed
three months to prepare for the trial and this was even
after Judge Raum had told him a year before that the
stipulation was not going to be forced on the respondent,
that it was not a stipulation. Benjamin stated further
that he could not be prepared, and I'm quoting, "and if
they had nothing other than to do than to win, I intend
to remain mute on all facts except the three that they
decided to try me on." I don't know exactly what that
means, but it's clear that he was telling the Court that
he intended to remain mute.

MR. GREENBERG: I think what he refers to is
on Page 4 of the stipulation, Items 15, A. B, and C. Those
are the three facts he was referring to. That's Exhibit
A, Page 4, Items 15, A. B, and C. I think that's what
he meant by the three facts.

THE COURT: And I then gave Mr. Benjamin the
setting for October 4 at ten o'clock in the morning and
he simply didn't show up.

183a
Transcript of Proceeding before
Tax Court on May 13, 1974

MR. GREENBERG: I believe there was -- what he told me was that he advised the Court he couldn't make it on the 4th and he wrote a letter to confirm it.

THE COURT: It's not in the transcript.

MR. GREENBERG: I think there was a letter --

THE COURT: I think some sort of a letter did come in later and I don't know just when. Mr. Goldberg, do you --

MR. GREENBERG: That's the original motion papers which I didn't make. I don't have it here. They would be -- I saw them this morning as part of the Court file. There was a letter annexed.

MR. GOLDBERG: I have a copy of a letter dated October 1, '73, Your Honor.

THE COURT: Pass it up, will you, please?

MR. GREENBERG: Do you have a copy of it?

THE COURT: It may be in here in this jungle of stuff someplace, but let me see that.

MR. GREENBERG: I believe it is.

MR. GOLDBERG: Here's respondent's copy of the notice it received.

THE COURT: Dated October 1, it is stamped received on October 5, Mr. Greenberg. Did you have a copy of this letter?

MR. GREENBERG: I don't know if that's the same

letter attached to the motion papers or not. The letter that I saw referred to a letter stating he would be in Delaware on October the 4th. No, it's not annexed to this, it's the original motion papers that were filed by Mr. Benjamin himself.

THE COURT: This is the letter, he says it's absolutely impossible for him to break a previous engagement, but it was received on October 5, the day after the case had been set for trial.

Very well. I'll hear from you, Mr. Goldberg.

MR. GOLDBERG: Yes. Your Honor, the first time this case was set for trial was on the June 7th, 1971, calendar before Judge Akins in Miami. At that time petitioner moved for a continuance and requested a change of place of venue for trial from Miami to New York because he did not have an attorney, he supposedly had a -- in New York he had engaged the services of a Mr. Buchbaum.

THE COURT: What's the date of this stipulation which was signed but never filed?

MR. GOLDBERG: I believe it was somewhere -- it was either May or June of '71, I'm not sure of the date. I don't -- the initial file is up in my office.

THE COURT: Very well. That's close enough for now.

MR. GOLDBERG: The Court refused to accept the

Transcript of Proceeding before
Tax Court on May 13, 1974

stipulation at that time. Judge Akins refused to accept the stipulation, and that's in the record.

THE COURT: That's when he found out the case wasn't going to be tried in Miami?

MR. GOLDBERG: Yes. Yes, he refused to accept the stipulation, and that's on the transcript.

THE COURT: Entirely proper.

MR. GOLDBERG: The case then came to me in New York City sometime in the summer of 1971. I received the TSO and it was placed on the calendar on January 24th, 1972, in New York City and Judge Qualey was at that -- heard that particular -- was the sitting Judge at that time.

In November of 1971, I sent him a Stipulation of Facts letter and I advised him I would not be bound by the stipulation was was signed in Miami. That was in November of 1971. I said that except for three -- Paragraph 15 of the stipulation was all right as far as I was concerned, but I wasn't going to be bound by a certain paragraph in the stipulation. I didn't think it was an adequate statement of the case. He had not a copy of the stipulation at the time and I furnished him a copy of the stipulation that he had signed. Judge Qualey continued the case from that session due to the problem that we were having.

186a
Transcript of Proceeding before
Tax Court on May 13, 1974

The case again was on the --

THE COURT: The problems you were having with Benjamin?

MR. GOLDBERG: With Benjamin regarding stipulating facts.

THE COURT: Very well.

MR. GOLDBERG: At times they were very acrimonious, to say the least. We just had a hard time discussing the case objectively.

The case again was set in New York before Judge Raum on November 13th, 1972. In September of '72 I called Mr. Benjamin and suggested he come in for a Stipulation of Facts conference and I prepared a stipulation with exhibits attached.

THE COURT: What date?

MR. GOLDBERG: In September of '72.

THE COURT: Very well.

MR. GOLDBERG: He refused to even read the stipulation at the time saying he wasn't bound by it at all. And I suggested that he look at it; I had just spoken to the GSA people and the -- had subpoenaed in preparation of trial the attorney for the trustee who handled the bankruptcy -- his bankrupt business back in the early '50's. I had subpoenaed Mr. Shark and interviewed him extensively regarding preparation of this

187a
Transcript of Proceeding before
Tax Court on May 13, 1974

case for trial. At that time I told Mr. Benjamin in the fall of '72 all the records which he claimed were not available were here in New York City either in the possession of the GSA personally on the 14th floor of this building or at the Federal Records Center on Washington Street in Greenwich Village which was a short subway ride up from downtown. He requested that I serve subpoenas for him and I said I wouldn't serve subpoenas for him, it's his own affair.

We then proceeded with the same particular argument before Judge Raum. We had lengthy chambers conference and Judge Raum stated on the record he would not compel the Government to sign -- or file that stipulation that was signed in Miami.

THE COURT: This was in November of '72?

MR. GOLDBERG: November of '72.

THE COURT: Very well.

MR. GOLDBERG: He received a further letter from the Regional Counsel's Office in Miami in December of '72 stating that the stipulation which he had signed in Miami was only to be used for future -- was to be held and retained only for future use and I explained to Mr. Benjamin at that time that was for reference purposes only in helping us prepare for a new Stipulation of Fact.

Again, the case came up on the October 1, '73, calendar

of which Your Honor was sitting at the time and Mr. Benjamin again tried to have respondent file with him the Miami stipulation which Judge Raum had told him the Government would not be compelled to file.

I remember him definitely stating on the record that if he had to go to trial, he would stand mute. He would offer no evidence at all.

Your Honor ordered the case to be heard on Monday morning -- on Thursday morning, October the 4th, at ten o'clock. Mr. Benjamin did not show up at the time. I moved and filed a written motion to dismiss the case and it was granted.

The case had been continued previously three times. I feel that there is -- the taxpayer has used the Court in order to delay litigating this case. If there was any possibility of settling this case, the case would've been settled years ago. We had one settlement conference here in New York which proved fruitless. Mr. Benjamin was told where the records were if he wanted to go ahead and get them and obtain them, that was his business, but as far as I was concerned, he had not established the amount of the loss nor the year of the loss, and that was made perfectly plain to him.

I see there's no compelling reason for the Court to vacate the order of October 4th dismissing both of these

cases.

THE COURT: Thank you. Mr. Greenberg, I'm going to let you answer the argument, if you care to.

MR. GOLDBERG: Well, pardon me one minute, Your Honor. There's one inaccurate statement in this affidavit; on Paragraph 2 he states, petitioner states that he has always been of the belief that he need not try any issues in this Court other than those indicated in the executed stipulation.

THE COURT: Well, the record gives belie to that. Raum told him very clearly and I told him very clearly a year later the same thing. Very well. You may answer, Mr. Greenberg.

MR. GREENBERG: Well, I think -- I'm sure everything Mr. Goldberg said is accurate; I don't dispute any of the facts as he stated. the only thing I can say for the petitioner is that he was ill-advised to proceed with this case without adequate counsel and he would now like to try the case. He could not -- he was not available on October the 4th and he has counsel now who is prepared to prepare his case for trial and there is a substantial amount involved in taxes, it's not an insignificant amount. And we request that the Court vacate its decision and grant us the right to try the case.

THE COURT: Mr. Greenberg, it just seems to me

that your client has been trying to play games with the Court and he's been doing it for years. He's had all the time there was.

MR. GOLDBERG: Your Honor, may I interject something?

THE COURT: Yes.

MR. GOLDBERG: When Mr. Benjamin -- when I first met Mr. Benjamin, I advised him to go to the Bar Referral Service for an attorney to make all possible efforts to obtain an attorney in this case. He did not heed my request. He thought he'd be able to do a better job if he went in by himself. He knew the magnitude of the case. This same issue was raised in another petition bearing a Docket No. 1962, he had also raised the same loss, which has no bearing on this particular case, but he's been aware of this issue for years. The biggest stumbling block why the case was never settled was because he could never provide the amount of the loss nor the year of the loss. He's known this now for a long, long time. It's not something new. It's not something in the last year or the year before; it's something from the inception of this case and the prior case back in the early sixties.

The respondent last fall had subpoenaed witnesses and was ready to go to trial in this case; I advised Mr. Benjamin what to do and where to go ahead and subpoena

191a
Transcript of Proceeding before
Tax Court on May 13, 1974

his witnesses. He refused. In fact, there was a situation in my office when he wanted to speak to my supervisor because I refused to serve subpoenas for him. We've had a -- it's been a long, lengthy situation and I don't feel -- I think justice would be disserved by vacating this order in this particular case. It's a very hard decision for Your Honor to make, but I have no sympathy for petitioner in this case. And I'm not particularly a hard person to deal with.

THE COURT: Gentlemen, the Court time and again just leans over backwards to prevent from defaulting people who have played square with the Court. The Court looks on Mr. Benjamin's actions here as just an excess of trying to get away with something and ignoring the advice of the Court, ignoring the orders of the Court.

Mr. Greenberg, your motion is going to be denied. I will not set aside the order.

MR. GREENBERG: Thank you, Your Honor.

(Whereupon, the hearing in the above case was adjourned as described above.)

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

MONROE ROSEN being duly sworn, says that on the *13th* day of *DECEMBER* 1974, he served *1 copy* of the annexed *APPENDIX* upon *SECRETARY* *CRAMPTON, ASST. ATTORNEY GENERAL* Esq., the attorney for the *Respondent* herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at 150 Christopher Street, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at ~~No. TAX DIVISION, UNITED STATES DEPT. OF JUSTICE, in the Borough of WASHINGTON, D.C., City of New York~~, being the address within the State therefore designated by him for that purpose.

Monroe Rosen

Sworn to before me, this

13th day of *December* 1974.

John A. Whittle

Notary Public in and for the State of New York

